IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1013

Filed 7 November 2023

McDowell County, Nos. 21 JA 57–58

IN THE MATTER OF:

D.J.W. and D.A.L.

Appeal by respondent-mother from order entered 9 September 2022 by Judge Ellen Shelley in McDowell County District Court. Heard in the Court of Appeals 9 October 2023.

Aaron G. Walker for the Petitioner-Appellee McDowell County Department of Social Services.

Sophie Goodman, Esq., for the Guardian ad Litem.

Christopher M. Watford for the Respondent-Appellant Mother.

STADING, Judge.

Respondent-Mother ("Mother") appeals from the trial court's adjudication and initial disposition order decreeing the matter a non-reunification case. For the reasons set forth below, we affirm the trial court's order.

I. Background

Mother gave birth to "Josh" in September 2012 and "Alex" in May 2014.[1, 2] At the relevant time, both children lived with Mother and another woman named Kirsten. On 3 May 2021, petitioner McDowell County Department of Social Services ("DSS") received a report of excessive discipline from a relative of the family. The relative also sent a video showing Kirsten beating Alex with a wooden paddle. The relative alleged this type of abuse, along with the withholding of food, occurred on a routine basis.

After DSS turned over the video to law enforcement, detectives interviewed Mother and both children. Mother denied any allegations of abuse. However, a social worker observed "excessive bruis[ing]" on Alex's legs, back, and spine. Furthermore, in response to an observation that the children were "extremely thin," Mother stated they were on a "no fat diet" due to medication they were taking. Additionally, after viewing the video of Alex's beating, she stated Kirsten was not hitting Alex that hard.

On 4 May 2021, DSS conducted forensic interviews of both children. The children reported being hit with belts, a paddle, and switches for talking and moving their hands, touching their hair, or other simple movements. They discussed being punished by "grounding," which required they lie in bed for days; they were not allowed to go to the kitchen for food; they used a bucket in their room to urinate; and

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[1] Pseudonyms are used to protect the identity of the children. N.C. App. P. 42(b).

[2] The juveniles' respective fathers are not parties to this appeal.

Mother and Kirsten yelled and cursed at them on a regular basis. On 5 May 2021, DSS filed juvenile petitions alleging that Josh and Alex were abused and neglected juveniles. The trial court entered orders authorizing DSS to assume nonsecure custody of the children the same day.

The trial court conducted hearings in March, June, July, and August of 2022, and entered its adjudication and disposition orders on 9 September 2022. In the adjudication order, the trial court found Alex had suffered "serious non-accidental injuries." The trial court noted, *inter alia*, a particularly disturbing incident—after being confined to his room for fifteen days in April 2021, Kirsten offered to end Alex's grounding by subjecting him to fifteen strikes with a wooden paddle, so long as he did not sit down. When Alex dropped to the ground after the fourteenth strike, he was struck fifteen more times. Mother was aware of the beating but offered no medical attention for the resulting injuries. The trial court found both Mother and Kirsten "den[ied] that 29 strikes/licks with a wooden paddle is excessive."

The trial court also found that Alex suffered physical injury to the back of his throat from Mother forcing food down his throat after his medication caused appetite suppression. The findings provide that Mother and Kirsten physically disciplined both children on a regular basis in a "cruel and grossly inappropriate" manner. The court found that the children slept in a cluttered basement, despite an available bedroom on the main floor of the home, and Alex's sleeping cot lacked sheets or a

blanket. The trial court made further findings stating that the children were underweight and medically neglected, and Mother and Kirsten would use attention-deficit hyperactivity medication and Benadryl to modify the children's behaviors. Based on these findings, the trial court adjudicated both children as abused and neglected juveniles.

The trial court incorporated by reference its adjudicatory findings into the disposition order. Additionally, the trial court made findings that Mother completed parenting classes, attended counseling services, and submitted to Comprehensive Clinical Assessments, as directed by her case plan with DSS. Nevertheless, the trial court determined Mother and Kirsten "d[id] not believe that their discipline [wa]s excessive or cruel." The court concluded Mother "has committed and encouraged chronic physical and emotional abuse . . . and [Mother's] conduct increased the enormity of the consequences of the aforesaid abuse and neglect." The court ordered that Josh and Alex remain in the custody of DSS and, pursuant to N.C. Gen. Stat. § 7B-901, decreed "this shall be a non-reunification case." On 12 September 2022, Mother entered her notice of appeal.

II. Jurisdiction

This Court has jurisdiction to hear this appeal pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(3) (2021).

III. Analysis

On appeal, Mother argues the trial court's disposition findings lack statutorily required specificity and do not support a finding of aggravated circumstance. As a result, she contends the trial court abused its discretion by ceasing reunification efforts.

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citation omitted). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re A.P.W.*, 378 N.C. 405, 410, 861 S.E.2d 819, 826 (2021) (citation omitted). "A trial court's finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court's ultimate finding [of fact]." *In re G.C.*, 384 N.C. 62, 65, 884 S.E.2d 658, 661 (2023) (alternation in original) (citation omitted). "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) (citation omitted).

The trial court necessarily implicates N.C. Gen. Stat. § 7B-901(c) when it ceases reunification efforts following an initial disposition hearing. *In re J.M.*, 255

N.C. App. 483, 499, 804 S.E.2d 830, 840–41 (2017). In pertinent part, N.C. Gen. Stat. § 7B-901(c) provides:

> If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification . . . shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:
>
> (1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
>
> . . . .
>
> b. Chronic physical or emotional abuse.
>
> . . . .
>
> f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

N.C. Gen. Stat. § 7B-901(c)(1) (2021).

A. Findings Implicating N.C. Gen. Stat. § 7B-901(c)(1)

First, Mother argues the trial court's findings lack the required specificity because they fail to include the statutory term "aggravated circumstances," and, as a result, hindered this Court's ability to review the basis for ceasing reunification efforts. In particular, she challenges finding of fact no. 14, which reads:

> 14. That the respondent mother has committed and encouraged chronic physical and emotional abuse as is

> recited in the findings section herein of this Order and the mother's conduct increased the enormity of the consequences of the aforesaid abuse and neglect. Reunification is inconsistent with the children's best interest.

Our Supreme Court has observed that findings of fact made pursuant to N.C. Gen. Stat. § 7B-901(c) "do not have to track the statutory language verbatim[.]" *In re J.M.*, 384 N.C. 584, 594, 887 S.E.2d 823, 830 (2023) (citing *In re H.A.J.*, 377 N.C. 43, 49, 855 S.E.2d 464, 470 (2021)); *see generally In re A.P.W.*, 378 N.C. 405, 412, 861 S.E.2d 819, 827 (2021) ("The trial court's written findings must address the statute's concerns but need not quote its exact language." (citation omitted)). Even absent the phrase "aggravated circumstance," it is clear from the finding that Mother's conduct was consistent with the circumstances described in N.C. Gen. Stat. § 7B-901(c)(1) (b) and (f). The finding recites the language from subsection (b)—"chronic physical or emotional abuse"—and subsection (f)—"conduct that increased the enormity or added to the injurious consequences of the abuse or neglect." N.C. Gen. Stat. § 7B-901(c)(1). We hold the finding is sufficient to evoke the statutory provision N.C. Gen. Stat. § 7B-901(c)(1) and enable our review. Accordingly, Mother's challenge on this basis fails.

B. Evidence Supporting Findings of Fact

Next, Mother contends the evidence introduced at the disposition hearing fails to support a finding of an aggravated circumstance. Moreover, she argues finding of

fact no. 13 is not supported by evidence and the evidence only shows Mother utilized all available resources in furtherance of reunification.

1. Dispositional Findings Supporting Aggravated Circumstance

Mother notes that all or portions of the disposition order's findings of fact nos. 8, 9, 11, 12, 13, and 14 "are derived directly from the adjudicatory findings." She argues that the trial court improperly relied on these findings, which it incorporated into the disposition order, to determine whether reunification efforts were required. In support of her argument, Mother cites *In re K.L.*, 254 N.C. App. 269, 802 S.E.2d 588 (2017), and *In re J.S.*, 165 N.C. App. 509, 598 S.E.2d 658 (2004), *superseded on other grounds by statute* 2013 N.C. Sess. Law 129, § 25 (N.C. 2013). Nonetheless, the trial court's adoption of its findings of fact is distinguishable from both of these cases and does not amount to error.

In *In re K.L.*, a trial court made findings of fact in a disposition order supporting its conclusion that reunification efforts with the respondent-mother were required. 254 N.C. App. at 275, 802 S.E.2d at 592. The trial court adopted those findings in a subsequent permanency planning order without new evidentiary findings to support a conclusion that reunification efforts would be futile. *Id.* This Court reversed and remanded the permanency planning order for additional findings of fact before reunification could be eliminated as a permanent plan. *Id.* at 285, 802 S.E.2d at 598.

In *In re J.S.*, this Court reversed and remanded a "cursory two page" permanency planning order wherein "the trial court incorporated a court report from DSS and a mental health report on [a juvenile] as a finding of fact." 165 N.C. App. at 511, 598 S.E.2d at 660. Noting that while "it is permissible for trial courts to consider all written reports and materials submitted in connection with those proceedings[,]" "[a] trial court may not delegate its fact finding duty" by broadly incorporating written reports as its findings of fact. *Id.*

However, the facts here are distinguishable from both *In re K.L.* and *In re J.S.*, as the trial court made additional findings in its disposition order supporting the conclusion to cease reunification efforts. Moreover, a disposition hearing may be informal, and our General Statutes allow a trial court to consider written reports or any other evidence "the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C. Gen. Stat. § 7B-901(a). In a disposition order, "the trial court may incorporate into its findings information obtained from written reports by the parties, as well as findings made at adjudication." *In re K.W.*, 272 N.C. App. at 492, 846 S.E.2d at 589 (citing *In re C.M.*, 183 N.C. App. at 213, 644 S.E.2d at 593–94 (2007)). Thus, the trial court's incorporation of its findings of fact made during the adjudication stage into its disposition order was proper. Mother's challenge is overruled.

2. Finding of Fact No. 13

Mother next challenges finding of fact no. 13, arguing it is not supported by competent evidence. In pertinent part, this finding provides "[Mother] reported during her Comprehensive Clinical Assessment that she was falsely accused of abusing her children and the video was depicting the minor child receiving a spanking by [Kirsten]." Where a disposition finding of fact is challenged, the standard of review "is whether the finding is supported by competent evidence." *In re B.C.T.*, 265 N.C. App. 176, 185, 828 S.E.2d 50, 57 (2019) (citation omitted).

At the dispositional hearing, a social worker testified to a therapist's written statement recorded during Mother's Comprehensive Clinical Assessment. The statement read: "Family members called DSS on mom and [Kirsten] and made false accusations to get the kids taken away." Mother also submitted to a mental health assessment with a different therapist within two weeks of the dispositional hearing. In Mother's testimony, she acknowledged that, on the mental health assessment report, the therapist recorded, "[Mother] disclosed, she and [Kirsten] were falsely accused of child abuse by a family member out of spite." Both assessments were admitted into evidence. *See* N.C. Gen. Stat. § 7B-901(a) ("The court may consider any evidence, . . . including testimony or evidence from any person who is not a party[.]"); *see also In re K.W.*, 272 N.C. App. at 492, 846 S.E.2d at 589. We hold the evidence to be competent to support the finding that Mother reported she had been falsely

accused of abusing her children. We overrule Mother's challenge and uphold finding of fact no. 13.

3. Mother's Reunification Efforts

Mother contends she cooperated with the case plan provided by DSS and engaged in efforts demonstrating her desire for a safe reunification with Josh and Alex. Due to those efforts, she argues "the evidence fails to support any finding that aggravating circumstances exist to cease reunification efforts at the initial disposition." We address this challenge with Mother's argument that the trial court's cessation of reunification efforts was an abuse of discretion.

C. Ceasing Reunification Efforts

Lastly, Mother argues the trial court abused its discretion in ceasing reunification efforts because it used "identical" conditions to form its findings of aggravating factors and to support the adjudication of Josh and Alex as abused and neglected juveniles. However, Mother's argument is misplaced.

Mother points to finding of fact no. 14, stating her conduct "increased the enormity" of abuse and neglect—an aggravated circumstance under N.C. Gen. Stat. § 7B-901(c)(1)(f). She argues this finding fails to identify specific conduct. Our Supreme Court stated N.C. Gen. Stat. § 7B-901(c)(1)(f) requires "the evidence in aggravation involve something in addition to the facts that [give] rise to the initial

adjudication of abuse and/or neglect." *In re L.N.H.*, 382 N.C. at 547–48, 879 S.E.2d at 146. However, N.C. Gen. Stat. § 7B-901(c)(1)(f) does not indicate the "act, practice, or conduct" must be specified in the finding referencing the statute. *See* N.C. Gen. Stat. § 7B-901(c)(1)(f).

Here, although the trial court did incorporate by reference its adjudicatory findings into its disposition order, the trial court also made observations to further support its conclusion. In unchallenged dispositional findings of fact nos. 6 and 7, the trial court observed, in accordance with her DSS case plan, Mother completed fifty-seven parenting classes, seven of which specifically addressed discipline and anger management. Unchallenged findings also note Mother had consistently attended mental health counseling sessions since the summer of 2021.

However, the trial court found, despite the parenting classes and counseling, Mother's "testimony at disposition that [Kirsten's] spanking of the children was not excessive shows that [Mother] is not contrite and does not understand the gravity of her and her spouse's actions." Moreover, the trial court also observed that "[Mother] and [Kirsten] do not believe their discipline is excessive or cruel . . . . [Mother] believes the living conditions for the minor children were appropriate. The Court fears that the children will be subjected to more harm and abuse if they were reunited with their mother." This supports the determination that Mother's conduct increased the enormity of the consequences of the abuse and neglect, evidencing an aggravated

circumstance. *See, e.g.*, *In re A.W.*, 377 N.C. 238, 856 S.E.2d 841 (2021) (upholding the finding that the respondent-mother's conduct increased the enormity and added to the consequences of neglect regarding her surviving child where she continued to deny the abuse of her deceased child, concealed the deceased child's cause of injury, and remained in a romantic relationship with the father who was incarcerated on charges related to the child's death).

Mother further contends the trial court's finding of chronic physical and emotional abuse—corresponding to N.C. Gen. Stat. § 7B-901(c)(1)(b)—under finding of fact no. 14, cannot serve as an aggravated circumstance. She alleges because those conditions support the initial adjudication of abuse, they "cannot serve as conduct that can be seen to 'increase the enormity' or 'add[] to the injurious consequences' of that conduct." N.C. Gen. Stat. § 7B-901(c)(1)(b) provides that a court can determine the existence of an aggravated circumstance where "the parent has committed or encouraged the commission of, or allowed the continuation of, *any* of the following upon the juvenile[,]" including "chronic physical or emotional abuse." N.C. Gen. Stat. § 7B-901(c)(1)(b) (emphasis added). The statute does not indicate the necessity of finding conduct increasing the enormity or adding to the injurious consequences of abuse or neglect where chronic physical or emotional abuse is found. *Id.* Consequently, Mother's challenge is meritless.

Upon a trial court's determination that an aggravating circumstance exists,

"the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required . . . , unless the court concludes that there is compelling evidence warranting continued reunification efforts[.]" N.C. Gen. Stat. § 7B-901(c). Although she completed portions of her case plan, the trial court's unchallenged findings reflect Mother did not believe her and Kirsten's discipline was excessive or cruel or that the living conditions for Alex and Josh were inappropriate. Moreover, the court found cause for concern that Josh and Alex would be subjected to further harm and abuse if reunited with Mother, and that reunification was not in their best interests. Accordingly, we hold the trial court did not abuse its discretion by declaring this a non-reunification case in accordance with N.C. Gen. Stat. § 7B-901(c)(1).

IV. **Conclusion**

For the reasons set forth above, we affirm the adjudication and disposition order.

AFFIRMED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).