

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA08-1236

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2009

IN THE MATTER OF:  
A.M.

Harnett County  
No. 07 J 137

Appeal by Respondent from orders entered 10 July 2008, *nunc pro tunc* 27 June 2008, by Judge George B. Murphy in District Court, Harnett County. Heard in the Court of Appeals 2 February 2009.

*E. Marshall Woodall and Duncan B. McCormick, for Petitioner-Appellee Harnett County Department of Social Services.*

*Susan J. Hall, for Respondent-Appellant Mother.*

*Pamela Newell Williams for Guardian ad Litem.*

McGEE, Judge.

Respondent, the mother of A.M., appeals from an order adjudicating A.M. a neglected and dependent juvenile. The Harnett County Department of Social Services (DSS) filed a juvenile petition on 12 July 2007 alleging that A.M. was a neglected and dependent juvenile. On the day the petition was filed, A.M. was one day old. DSS alleged that Respondent did not have stable housing, claiming that Respondent had stayed with various relatives for the past month, and that Respondent had provided social workers with at least two other places where she intended to stay upon A.M.'s release from the hospital. Additionally, DSS alleged that

Respondent did not have a car seat or formula for A.M.

DSS further claimed that A.M. was neglected because Respondent "had three children removed from [her] care because of failure to extend proper care and supervision to said children and allowing them to live in an environment injurious to their welfare." DSS alleged that Respondent "suffers from mild mental retardation and mood disorder and was not cooperating with or participating in recommended treatment during DSS involvement with the older children." DSS asserted that because of the failure of Respondent to "adequately parent [the] three older juveniles, they (the juveniles) suffered maltreatment and were subjected to risk of harm." DSS also alleged that A.M. was dependent because Respondent was unable to provide for A.M.'s care or supervision, and lacked an appropriate alternative child care arrangement. A non-secure custody order was entered and A.M. was removed from Respondent's care.

Adjudicatory and disposition hearings were held on 4 April 2008 and 27 June 2008. The trial court entered the written adjudicatory and disposition orders on 10 July 2008, *nunc pro tunc* 27 June 2008. The trial court found that A.M. was a neglected and dependent juvenile. The trial court awarded custody to DSS, provided Respondent with visitation rights, and concluded that the permanent plan for A.M. should be reunification. Respondent appeals.

Respondent contends that the trial court erred by adjudicating A.M. a neglected and dependent juvenile. In an abuse, neglect and

dependency case, review is limited to the issue of whether the conclusion is supported by adequate findings of fact. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citing *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). "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) (2007). N.C.G.S. § 7B-101(15) permits "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) (citing *In re Nicholson and Ford*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994)). "In cases of this sort [involving a newborn], 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." *Id.* at 396, 521 S.E.2d at 127.

In the case before us, the trial court made findings of fact that three of A.M.'s older siblings (N.M., C.J., and B.M.) had been removed from Respondent's care after being found either neglected and/or dependent juveniles. N.M. was removed from Respondent's care "because of an unsanitary condition of the home and the

presence of roaches on and about the juvenile and infesting the house." C.J. was removed from Respondent's care because Respondent "delayed in getting medical attention when the child was sick and had been sick for some appreciable time." Respondent's parental rights to N.M. and C.J. were terminated. In an unpublished opinion, our Court overturned the order adjudicating B.M. neglected. *In re B.M.*, 186 N.C. App. 304, 650 S.E.2d 675, (2007) (unpublished), *disc. review denied*, 362 N.C. 86, 655 S.E.2d 835 (2007).

The trial court found that in the cases of the three older siblings, DSS had extended services to Respondent, but Respondent "failed or otherwise refused to take advantage of the services offered in all three cases." The trial court specifically found that Respondent

refused to attend mental health services, refused to attend vocational rehabilitation, failed to use HARTS transportation and had to re-start the PRIDE program 4 times due to failure to attend. [Respondent] lacked appropriate housing for the child[ren] and had no transportation.

Regarding A.M., the trial court made the following findings of fact:

8. The [P]etitioner has exercised reasonable efforts to prevent foster care placement of the juvenile by extension of case management services after investigations and reports; however, the [P]etitioner was unable to prevent filing of the petition and placement involving the juvenile, A.M., which action was necessary for the protection and safety of the juvenile.

9. Respondent . . . suffers from mild mental retardation and mood disorder and was not

cooperative with DSS and did not participate in recommended treatment during DSS involvement with [N.M., C.J., and B.M.] . . .

. . . . .

11. [Respondent is] not mentally capable of parenting a child without the help of some responsible adult. . . . [Respondent has] limited capacity to absorb incoming information, process it and then apply the information received. [Respondent's] limited cognitive abilities make it difficult for [her] to receive instructions and apply what [she has] learned even on a basic level. [Respondent has] not exhibited the basic level of skills necessary to parent a child.

12. [Respondent has not] lived independently. [Respondent does not] drive[] an automobile.

. . . . .

15. Throughout the time DSS has worked with the family since 2004, [Respondent has] never maintained stable housing. [She has] continually moved from place to place. During one year alone, [she] moved to or lived in eight different residences.

16. [Respondent has] failed to take advantage of the services offered to [her] to improve [her] parenting skills.

17. [Respondent's] failure to provide care, supervision and discipline constitutes a substantial risk of physical, mental and emotional harm to the child given the age of the child and [Respondent's] limited abilities. This child is a baby requiring constant supervision and care. Daily judgments for infant care and safety must be made which are difficult for [Respondent] herein, when considering [her] mental disabilities, history of neglect and inability or unwillingness to improve [her] parenting skills. . . .

18. The conditions that led to the removal of the siblings from the home exist today; including diagnoses of mental retardation, lack of housing, lack of supplies for the baby

and the failure to abide by the case plans and take advantage of services offered by DSS. These conditions constitute a risk of harm to the minor child.

. . . .

20. Based upon the history of neglect by the [Respondent], [her] continued pattern of moving from house to house and [her] inability or unwillingness to take advantage of DSS services, there is a substantial risk of future neglect to this infant child.

Respondent does not specifically contest these findings on appeal. Therefore, the findings of fact are deemed to be supported by sufficient evidence and are binding on appeal. N.C.R. App. P. 28(b)(6); see also *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005) (concluding the respondent had abandoned factual assignments of error when she "failed to specifically argue in her brief that they were unsupported by evidence"). Accordingly, based on these findings, we find the trial court did not err by adjudicating A.M. a neglected juvenile.

"Dependent juvenile" is defined in N.C. Gen. Stat. § 7B-101(9) as:

A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9)(2007). "In determining whether a juvenile is dependent, 'the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care

arrangements.'" *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007) (quoting *In re P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406). "Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court." *Id.* (citing *In re K.D.*, 178 N.C. App. 322, 329, 631 S.E.2d 150, 155 (2006)).

In this case, the trial court found as fact:

19. [Respondent is] unable to provide care or supervision for the minor child and [] [has] no available alternative child care arrangements. [Respondent has] lived in numerous houses with different family members but not in any stable place for any length of time. [Respondent has] given no suggested alternative child care arrangement. [Respondent has] no family members available to assist [her] or provide alternative child care arrangements on a regular continuing basis. DSS has investigated numerous family members during the last four years but has not determined that any family members are willing and/or suitable caregivers for the child.

. . . .

24. No family member, friend or person appeared on behalf of the [Respondent] to testify or volunteer to be an alternative child care placement.

Again, Respondent does not contest these findings on appeal. Therefore, the findings of fact are deemed to be supported by sufficient evidence and are binding on appeal. N.C.R. App. P. 28(b)(6); see also *In re P.M.*, 169 N.C. App. at 424, 610 S.E.2d at 404-05. We hold that based on these findings, the trial court did

not err in concluding that A.M. was a dependent juvenile. We therefore affirm the order of the trial court.

Affirmed.

Chief Judge MARTIN and Judge WYNN concur.

Report per Rule 30(e).