NO. COA08-460

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

IN THE MATTER OF:

J.J.B., and
J.R.B.

Stokes County
Nos. 05 JA 61A,
06 JA 40A

Appeal by respondent mother from adjudication orders entered 6 February 2008, *nunc pro tunc* 30 November 2007, by Judge Spencer G. Key, Jr. in Stokes County District Court. Heard in the Court of Appeals 25 August 2008.

J. Tyrone Browder, for Stokes County Department of Social Services, petitioner-appellee.

Richard Croutharmel, for respondent-appellant mother.

Womble Carlyle Sandridge & Rice by Aulica Lin Rutland, for Guardian ad Litem.

JACKSON, Judge.

Respondent, the mother of J.J.B. and J.R.B., appeals from the adjudication orders which concluded that her son, J.J.B., and her daughter, J.R.B., were neglected. Based upon the following, we affirm.

On 21 August 2007, the Stokes County Department of Social Services ("DSS") filed petitions alleging that J.J.B. and J.R.B. were neglected juveniles in that they lived in an environment that was injurious to their welfare. At the time, J.J.B. and J.R.B. lived with their mother and father in their paternal grandfather's house. DSS alleged that the children previously had been in DSS custody in 2005, but were returned to the parents on 4 January 2007. DSS alleged that it received three reports regarding respondent's children in the summer of 2007. The first, received on 24 July 2007, was that the father was beating respondent "to the point of . . . bleeding on the walls" and that respondent continued to use drugs and alcohol. On the same day, the parents entered into a safety assessment with DSS, stating that they would not engage in domestic violence or use drugs or alcohol in the presence of the children, always would have a safe and sober caretaker for the children, and would submit to random drug screens. The next day, the parents entered into a second safety assessment.

On 26 July 2007, DSS received a second report that respondent had "punched [J.J.B.] yesterday in the face, 'knuckles to cheek' and then drug him in the gravel to the back building of [his] daycare." Respondent entered into another safety assessment, agreeing that the 25 July 2007 assessment still was in effect.

On 20 August 2007, DSS received additional information that the parents took J.J.B. and J.R.B. to a party, the father had been drinking, and respondent stayed out all night after the father took the children home. DSS was further informed that both parents were

continuing to use illegal drugs and were arguing in the presence of the children in violation of the safety agreement. Finally, DSS alleged that respondent tested positive for cocaine, marijuana, and opiates, and was arrested on 20 August 2007. An order for nonsecure custody also was entered on 20 August 2007, and the children were placed in DSS custody. By order entered 30 August 2007, the trial court continued nonsecure custody of J.J.B. and J.R.B.

After several continuances, the trial court conducted adjudicatory hearings on 29 November 2007 and 30 November 2007. On 6 February 2008, *nunc pro tunc* 30 November 2007, the trial court also entered the written adjudicatory orders, finding that J.J.B. and J.R.B. were neglected juveniles. On 6 February 2007, *nunc pro tunc* 30 November 2007, the trial court entered the dispositional orders, in which it awarded custody to DSS. The trial court further ordered both parents to (1) complete all treatment plans; (2) comply with DSS case plans and maintain sobriety; and (3) submit to bi-monthly random drug testing. The father participated in the trial court proceedings, but does not appeal. Respondent-mother appeals.

Respondent contends that the trial court erred in several findings of fact and in concluding that J.J.B. and J.R.B. are neglected juveniles. We first address respondent's challenges to several of the trial court's findings of fact in the adjudication orders for J.J.B. and J.R.B. Respondent contends that findings of fact numbered 5, 7, 8, and 17 through 20 in each of the orders were

not based upon competent evidence in the record. "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) (citations omitted). 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) (citations omitted). Furthermore, "'[t]he 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.* (quoting *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985)).

We note initially that respondent does not object to the remaining findings of fact. Accordingly, findings of fact numbered 1 through 4, 6, and 9 through 16 are deemed to be supported by clear and convincing evidence and, therefore, are binding on appeal. *See In re J.D.S.*, 170 N.C. App. 244, 252, 612 S.E.2d 350, 355, *cert. denied*, 360 N.C. 64, 623 S.E.2d 584 (2005). However, we address each challenged finding of fact in turn.

Respondent first raises evidentiary challenges to two findings of fact. Respondent contends that the trial court erred in admitting certain evidence that supports findings of fact numbered 18 and 19 and that they therefore are not supported by competent evidence. "A trial court's evidentiary rulings are subject to

appellate review for an abuse of discretion, and will be reversed only upon a finding that the ruling was so arbitrary that it could not be the result of a reasoned decision." *Lord v. Customized Consulting Specialty, Inc.*, 182 N.C. App. 635, 644–45, 643 S.E.2d 28, 33–34, *disc. rev. denied*, 361 N.C. 694, 652 S.E.2d 647 (2007).

In finding of fact number 18, the trial court found that J.J.B. told his maternal grandmother that his parents "got in a fight and that [his father] beat up [respondent] and that there was blood everywhere." Respondent contends that J.J.B.'s statements regarding his parents' fighting are inadmissible hearsay, and that finding of fact number 18 therefore is not supported by competent evidence.

Respondent has failed to preserve this issue for appeal because she did not object to the maternal grandmother's testimony on this basis when it was presented at the adjudication hearing. "It is well established that the admission of evidence without objection waives prior or subsequent objection to the admission of evidence of a similar character." *State v. Nobles*, 350 N.C. 483, 501, 515 S.E.2d 885, 896 (1999) (citations and quotation marks omitted). Respondent objected to the introduction of similar evidence during testimony by a DSS investigator, but failed to object to the maternal grandmother's testimony. Therefore, there was competent evidence admitted at the hearing to support this finding of fact. We note that the finding of fact does not state that the incident happened, only that J.J.B. stated that it did. We do not consider this evidence as proof that the incident

happened, only as an indication of what J.J.B. stated, and as some evidence of his state of mind concerning his parents' relationship and its effects upon him.

Respondent's second evidentiary challenge is to finding of fact number 19, in which the trial court found that she tested positive for cocaine, marijuana, and opiates on 20 August 2007, when she was arrested for a probation violation. This finding was based on testimony by a DSS investigator and petitioner's Exhibit 6, the results of the drug screen taken by respondent's probation officer on 20 August 2007. Respondent contends petitioner failed to lay a proper foundation for admission of the exhibit. However, again respondent failed to timely and specifically object to the introduction of the exhibit. Respondent did not object to the DSS investigator's testimony, and only made one blanket objection to the introduction of six exhibits. A general objection is not sufficient to preserve an evidentiary ruling for appeal. *Nunn v. Allen*, 154 N.C. App. 523, 531, 574 S.E.2d 35, 40-41 (2002), *disc. rev. denied*, 356 N.C. 675, 577 S.E.2d 630 (2003); *see* N.C. Gen. Stat. § 8C-1, Rule 103(a)(1) (2007). Although she specifically objected to one of the six exhibits on the grounds of improper foundation, she did not raise this issue for the admission of the drug test at trial, and may not now do so for the first time on appeal. *In re D.R.S., W.J.S.*, 181 N.C. App. 136, 140, 638 S.E.2d 626, 628 (2007).

Next, respondent challenges finding of fact number 5, in which the court found that DSS entered into a safety assessment with the

parents on 24 July 2007 agreeing, *inter alia*, that "there would be no domestic violence, no drug or alcohol use . . . ." Respondent argues that this finding is not supported by competent evidence because, in actuality, the safety assessment stated that there would be no domestic violence and no drug or alcohol use "in the presence of the children." Further, respondent argues that this finding was in error because there was no evidence she engaged in domestic violence or used drugs or alcohol in front of the children.

We acknowledge that respondent is correct in pointing out that language in the finding of fact differs slightly from the language in the safety assessment. However, we conclude that the slight discrepancy between the trial court's language and the safety assessment is not so egregious that it constitutes error. That same safety assessment also stated that respondent agreed to random drug testing. Clearly implied in this agreement is that respondent was not to use drugs illegally, whether or not she was in the presence of her children. Furthermore, contrary to respondent's suggestion, finding of fact number 5 in no way states that respondent was engaging in domestic violence or using drugs or alcohol in front of the children. The finding simply recites the terms of the 24 July 2007 safety assessment. Accordingly, we hold that the trial court did not err in finding of fact number 5, and we consider this finding of fact in light of the entire 24 July 2007 safety assessment.

In the next set of challenges, respondent essentially argues that certain findings are not supported by competent evidence because the evidence supports multiple conclusions. Respondent first challenges finding of fact number 7, in which the trial court found that the father admitted to DSS investigators that he drove with J.J.B. and J.R.B. in the car after consuming alcohol. This finding was based upon the testimony of two DSS investigators' confirming the father's admission. Respondent contends that this finding is not supported by competent evidence because the father's testimony conflicts with the testimony of the DSS investigators. Although the evidence is conflicting, it is the duty of the trial judge to determine the weight and credibility to be given the evidence. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1983). The testimony of the DSS investigators supports the finding, and we conclude that there was clear, cogent, and convincing evidence in the record to support finding of fact number 7.

Respondent also challenges finding of fact number 8, in which the trial court found that, between June and August 2007, the father left the children with their paternal grandfather who "has health problems and drinks at least six beers every night to help him go to sleep." Respondent contends that this finding is not supported by competent evidence because the grandfather testified: (1) he did not drink every night and (2) the father left the children with him on one or two occasions. Nonetheless, a review of the transcript reveals competent evidence to support this finding.

The grandfather admitted that he regularly drinks six beers in one sitting, but when asked whether he drank every night, he answered, "[j]ust about. Not every night." However, when asked whether the grandfather drinks every night, the father answered in the affirmative and later stated, "[i]f not every, about." The father also admitted that, on different occasions, he left the children alone with the grandfather while he was drinking, which is the gravamen of this finding of fact. Thus, we conclude that the trial court did not err in finding of fact number 8.

Next, respondent challenges finding of fact number 17, in which the trial court found that the maternal grandmother had witnessed the parents fighting in front of J.J.B. and J.R.B., that J.J.B. hits and curses respondent when the parents fight, and that J.R.B. appears to be insecure and wants to be held. Respondent essentially argues that the maternal grandmother is not credible and therefore her testimony is not competent to support the finding. Again, we note that credibility determinations are left to the trial judge. *See Hughes*, 74 N.C. App. at 759, 330 S.E.2d at 218. Our review of the transcript leads us to the conclusion that the maternal grandmother's testimony supports finding of fact number 17. Accordingly, we conclude there was clear, cogent, and convincing evidence in the record to support finding of fact number 17. Respondent's arguments concerning the trial court's findings of fact numbered 5, 7, 8, and 17 are without merit.

Next, respondent challenges finding of fact number 20, in which the trial court found that the children "live[] in an

environment that is injurious to [their] welfare, and neither parent has taken any action to remove [the children] from that environment." Respondent contends that this finding is really a conclusion of law. "A 'conclusion of law' is the court's statement of the law which is determinative of the matter at issue between the parties." *Hughes*, 74 N.C. App. at 759–60, 330 S.E.2d at 219. Respondent argues that, because (1) neglect is the ultimate issue between the parties and (2) one manner of proving neglect is demonstrating that the parents subjected the children to an environment that is injurious to their welfare, finding of fact number 20 should be classified as a conclusion of law and is not supported by competent evidence. We agree. *See In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 892-93 (2004) (citation omitted).

Further, respondent contends that the findings of fact do not support the trial court's conclusion that the children were neglected. We disagree. In our review of the record, we note sufficient findings to support the conclusion that J.J.B. and J.R.B. were neglected. A neglected juvenile is defined as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . ." N.C. Gen. Stat. § 7B-101(15) (2007). "[T]his Court has consistently required 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) (internal citations and quotation marks omitted).

The findings of fact reveal that both parents have a history of substance abuse and of engaging in domestic violence in front of the children; that respondent has a history of failing to provide adequate supervision and care for the children and has failed to make arrangements for such care and supervision in her absence; that J.J.B. witnessed respondent's extensive bleeding from her suicide attempt; that respondent tested positive for cocaine, marijuana, and opiates on 20 August 2007; and that respondent, on one occasion, got into a fight with then two-year-old J.J.B., punched him in the face twice, and dragged him six feet across a gravel parking lot. Such conduct subjected the children to a substantial risk of physical, mental, or emotional impairment. Indeed, the findings also reveal that the children already had exhibited signs of impairment. Findings of fact numbered 14 and 17 demonstrate that J.J.B. "hits and curses" respondent and "got into an argument" with respondent, throwing gravel at her. Finding of fact number 17 also demonstrates that J.R.B. "appears to be insecure and wants to be held." The trial court's findings of fact therefore support the conclusion of law that J.J.B. and J.R.B. are neglected juveniles. This argument is without merit.

Finally, respondent contends that the trial court committed reversible error by considering a predisposition report prior to the conclusion of the adjudication hearing. In connection with a nonsecure custody hearing, DSS submitted a report which indicated

both parents completed a drug screen on 6 September 2007 and both tested positive for cocaine.

North Carolina General Statutes, section 7B-808(a) provides that "[n]o predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing." N.C. Gen. Stat. § 7B-808(a) (2007). Although not technically a "predisposition report," we acknowledge the dispositional nature of the drug test results contained in the DSS report. However, a previous panel of this Court held that although it was improper for the trial court to consider dispositional evidence during adjudication, such consideration is not reversible error when the evidence is used only for the purpose of determining an appropriate disposition. *In re Mashburn*, 162 N.C. App. 386, 396–97, 591 S.E.2d 584, 591–92 (2004) (citing *In re Barkley*, 61 N.C. App. 267, 271, 300 S.E.2d 713, 716 (1983) ("indicating that it must be shown that the trial court considered dispositional evidence for purposes other than determining an appropriate disposition).

In the instant case, respondent has not offered any evidence that the trial court relied on the drug test results in the adjudication orders. Indeed, respondent concedes that the trial court did not reference this evidence in its adjudication orders. Furthermore, the record contains abundant evidence to support the trial court's neglect determination. Thus, respondent has not demonstrated that the DSS report was used for anything other than disposition. Accordingly, the trial court's acceptance of such

evidence does not constitute reversible error. This argument is without merit.

AFFIRMED.

Judges McCULLOUGH and STEPHENS concur.

Report per Rule 30(e).