NO. COA08-825

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

IN THE MATTER OF:
K.E., Jr.

Buncombe County
No. 07 JA 454

Appeal by respondent-grandmother from order entered 11 April 2008 by Judge Marvin P. Pope, Jr. in Buncombe County District Court. Heard in the Court of Appeals 24 November 2008.

J. Suzanne Smith for petitioner-appellee Buncombe County Department of Social Services.

Michael N. Teasley for guardian ad litem.

Janet K. Ledbetter for respondent-appellant grandmother.

BRYANT, Judge.

Respondent, the maternal grandmother of K.E., Jr., appeals from an adjudication order which concluded that the juvenile K.E., Jr. was neglected and dependent. After careful review, we hold that several of the trial court's findings of fact are not supported by clear and convincing evidence. We also hold that the trial court's findings are insufficient to support the conclusion that K.E., Jr. was neglected and dependent. We, therefore, vacate the decision of the Buncombe County District Court.

On 3 December 2007, the Buncombe County Department of Social Services ("DSS") filed a petition alleging that K.E., Jr. was a neglected and dependent juvenile. K.E., Jr. was 17 years old at the time of the petition and lived with respondent, who is his primary caretaker. K.E., Jr.'s mother lives in Waco, Texas, and the whereabouts of his father are unknown.

As a basis for the petition, DSS alleged, in pertinent part, that K.E., Jr. has significant mental health issues and that respondent has failed to have K.E., Jr. properly treated due to "paranoia." The petition was related to the following report, which DSS received on 30 November 2007:

> That the maternal grandmother had taken the minor child to the Emergency Room at Mission/St. Joseph Hospital because the minor child was wandering the streets barefooted, and was extremely agitated. The maternal grandmother refused to allow the doctors to fully treat the minor child because of her paranoid behaviors. The maternal grandmother removed the minor child from the hospital against medical advice.

In a nonsecure custody order dated 30 November 2007, the trial court placed K.E., Jr. in DSS custody. The trial court subsequently kept custody with DSS.

The trial court conducted an adjudicatory and disposition hearing on 30 January 2008. DSS first offered the testimony of Jo Galloway, a DSS social worker, during the adjudicatory portion of the hearing. Ms. Galloway testified that she first became involved with the case after receiving a report on 14 November 2007 that K.E., Jr. was not receiving proper medical treatment and was

hearing voices and seeing things. Ms. Galloway interviewed respondent and K.E., Jr., and she learned that K.E., Jr. previously received inpatient treatment at Copestone Psychiatric Unit from 30 June 2007 to 1 July 2007. During the interview, Ms. Galloway observed the following: K.E., Jr. had some involuntary jerking of his arm, he responded to questions in very short sentences, his eyes were glazed over, he did not appear fully focused, and he seemed agitated. After the interview, K.E., Jr. was involved with Family Preservation Services, had a medical assessment, and was given a therapist/case manager.

DSS received a second report on 30 November 2007. According to the report, respondent took K.E., Jr. to the emergency room at Mission Hospital on 29 November 2007 because he was seeing things, hearing voices, and, at one point, left the house without shoes and was wandering the streets. The report further alleged that the hospital staff advised further treatment for K.E., Jr., but respondent removed him from the hospital against medical advice. Upon receiving the report, Ms. Galloway went to respondent's home. According to Ms. Galloway, respondent admitted to removing K.E., Jr. from the hospital against medical advice. Ms. Galloway discussed the importance of treatment for K.E., Jr., and respondent agreed to take him back to the hospital.

Ms. Galloway left respondent's home as respondent and K.E., Jr. were leaving to go to the hospital. Several hours later, Ms. Galloway received a call from her supervisor advising her to go to the hospital. When Ms. Galloway arrived, she observed that K.E.,

Jr. had been chemically and physically sedated. According to Ms. Galloway, respondent was angry at the hospital staff because they would not let her accompany K.E., Jr. into the emergency room. Respondent was also upset that the staff had restrained K.E., Jr. without her consent and failed to update her as to K.E., Jr.'s condition. Ms. Galloway testified that respondent was uncooperative with the staff and wanted to remove K.E., Jr. from the hospital. Ms. Galloway also testified that respondent was concerned about the security of K.E., Jr.'s urine sample, felt she was being discriminated against, and felt that the staff was abusing K.E., Jr.

Ms. Galloway testified that she then gave respondent the option of either allowing K.E., Jr. to be treated or having DSS take custody of him. According to Ms. Galloway, respondent refused to allow K.E., Jr. to be treated at Mission. However, Ms. Galloway clarified that respondent admitted K.E., Jr. needed care, but just did not want him treated at Mission. Ms. Galloway recalled that respondent mentioned another health facility, but Ms. Galloway could not recall the name.

DSS also offered the testimony of Dr. Tom Berner, a physician at Mission Hospital who saw K.E., Jr. on 29 and 30 November 2007. According to Dr. Berner, respondent brought K.E., Jr. to the hospital on 29 November 2007 because she was concerned with his behavior: he was hearing things, acting inappropriately, not getting dressed, and was saying things that did not make sense. Dr. Berner conducted a background interview, reviewed medical

records, and learned that K.E., Jr. had been previously hospitalized and had some past history of head trauma. The next step in treatment would have been for a psych clinician to conduct an evaluation. However, K.E., Jr. never received the evaluation because respondent did not want him to be treated any further and removed him from the hospital. Although Dr. Berner encouraged respondent to stay, he felt K.E., Jr. was safe and could not restrain respondent or K.E., Jr. Dr. Berner did not go to the extent of having respondent sign a statement that K.E., Jr. was leaving against medical advice. Nonetheless, Dr. Berner and the staff contacted DSS to evaluate the situation. Dr. Berner also recalled that respondent was concerned about certain hospital procedures, such as the security of K.E., Jr.'s urine sample.

Dr. Berner saw K.E., Jr. and respondent the next day, but his contact was much more limited. Dr. Berner intended to pick up where they had left off, but the process was interrupted because K.E., Jr. struck a nurse unexpectedly and without provocation. After K.E., Jr. struck the nurse, the hospital staff decided to initiate an involuntary commitment petition for K.E., Jr. Dr. Berner did not recall whether respondent argued about K.E., Jr.'s treatment or threatened to remove him on 30 November 2007.

On 11 April 2008, the trial court entered a written adjudicatory and disposition order. In the adjudication portion of the order, the trial court found: (1) K.E., Jr. a neglected juvenile on the ground that he did not receive proper care, supervision, or discipline from respondent and on the ground that

he was not provided necessary remedial care; and (2) K.E., Jr. a dependent juvenile on the ground that respondent was unable to provide for his care or supervision and lacked an appropriate alternative child care arrangement. In the disposition portion of the order, the trial court found that it was in the best interest of K.E., Jr. to remain in the custody of DSS. Respondent appeals.

I

On appeal, respondent only challenges the adjudicatory portion of the trial court's order. Respondent contends: (1) several of the adjudicatory findings of fact are not supported by clear and convincing evidence, the findings of fact are not specific and ultimate findings, and several of the findings erroneously combine and conflate K.E., Jr.'s two hospital visits; (2) the findings of fact do not support the conclusion that K.E., Jr. was neglected; and (3) the findings of fact do not support the conclusion that K.E., Jr. was dependent.

We first address respondent's challenges to findings of fact numbers 10, 11, and 13-21. "Allegations of neglect must be proven by clear and convincing evidence. In a non-jury neglect [or dependency] 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).

Before we address respondent's challenges to each finding of fact, we reiterate that only the *adjudicatory* findings are being challenged. In their briefs, both respondent and DSS at times rely on the disposition report of the guardian *ad litem* ("GAL") to support their arguments. However, such evidence cannot be used to support the trial court's adjudicatory findings of fact. *See* N.C. Gen. Stat. § 7B-808(a) ("No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing."); *In re Barkley*, 61 N.C. App. 267, 271, 300 S.E.2d 713, 716 (1983) (indicating that it is error for a trial court to consider dispositional evidence for the purpose of finding adjudicatory facts); *see also In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 14-15 (2006) (noting the difference between adjudication and disposition evidence). Accordingly, we will not consider any disposition evidence in our determination of whether the adjudicatory findings of fact were supported by clear and convincing evidence.

The first three challenged findings of fact, numbers 10, 11, and 13, all relate to Ms. Galloway's first contact with the family on or about 14 November 2007. Finding of fact number 10 states:

> On November 14, 2007, [DSS] learned that the minor child has significant medical and mental health issues. [Respondent] has sought some medical and mental health treatment for the minor child, but due to her paranoia, she refused to have the minor child properly treated. The minor child has been diagnosed with Psychotic Disorder and Mood Disorder. The minor child reports hearing voices in his head and he hallucinates. The minor child exhibits jerking behavior of his head and

> limbs and has difficulty communicating with others.

The first sentence of this finding is framed only in terms of information reported to DSS, and is supported by the testimony of Ms. Galloway. However, the remainder of the finding is framed in terms of proven facts that DSS observed after Ms. Galloway's meeting on or about 15 November 2007, not mere allegations or reports. After our review of the pertinent testimony by Ms. Galloway, we find that the only other portion of the finding that is supported by competent evidence is the portion which states that K.E., Jr. exhibits jerking behavior of his head and limbs and has difficulty communicating with others. The evidence which supports this sentence will be discussed in connection with finding of fact number 13, below.

We find no evidence in the record to support the remaining portions of finding of fact number 10, which state the following: (1) K.E., Jr. had been diagnosed with Psychotic Disorder and Mood Disorder; (2) respondent had refused to have K.E., Jr. properly treated due to her paranoia; and (3) K.E., Jr. reported hallucinations and hearing voices as of 14 November 2007. These findings were made in the context of the 14 November 2007 investigation, and, at most, Ms. Galloway offered that, on 15 November 2007, she discovered that K.E., Jr. had "mental health problems." Her testimony regarding the initial investigation does not support the remaining portions of finding of fact number 10.

Finding of fact number 11 states that the case was investigated by Ms. Galloway and that she "found that the minor

child had been diagnosed with the above disorders during a stay at Copestone from June 30, 2007 to July 1, 2007." Although Ms. Galloway testified that K.E., Jr. had a previous stay at Copestone from 30 June 2007 to 1 July 2007, she offered no testimony regarding K.E., Jr.'s specific diagnoses. Therefore, the finding is not supported by clear and convincing evidence.

Finding of fact number 13 states that, when Ms. Galloway interviewed K.E., Jr., he "appeared 'spaced out,'" was "not able to communicate effectively," and was "involuntarily jerking his limbs and head." This finding is based on Ms. Galloway's description of K.E., Jr.'s behavior during the 14 November 2008 interview:

> [H]e was sitting on a couch and when I addressed questions to him he responded in very short sentences. He had some involuntary jerking of his arm. [] [H]is eyes appeared kind of glazed over like he wasn't fully focused or present with what was going on. He was somewhat agitated and he would get up and leave the room and then he'd come back.

While the wording of Ms. Galloway's testimony is not identical to the wording of the finding, we find that it is sufficient to support finding of fact number 13.

The next challenged finding of fact, number 14, relates to Ms. Galloway's contact with Family Preservation Services:

> [Ms.] Galloway contacted Maureen Motley, the Clinical Director of Family Preservation Services. Ms. Motley stated that since [respondent] is unwilling to communicate with the minor child's therapist, the treatment of the minor child would not be able to take place. Family Preservation was planning to refer the family to intensive in-home services through a different agency because Family

> Preservation was unable to effectively address the minor child's needs.

DSS failed to present any competent evidence to support this finding. On at least three occasions, Ms. Galloway attempted to testify regarding the content of communication with Family Preservation Services. However, in all three instances, the trial court sustained respondent's objection to this evidence, and it was never admitted. Accordingly, we find that this finding of fact is not supported by competent evidence.

The next set of findings, numbers 15-20, relate to respondent's two trips to the emergency room with K.E., Jr. on 29 and 30 November 2007. Respondent argues that the trial court erred by conflating the two trips into one. We agree with respondent in this regard. The evidence clearly establishes that respondent made two separate trips to the emergency room with K.E., Jr. on 29 and 30 November 2007. However, the trial court's order makes no mention of the 29 November 2007 hospital visit, nor does it specify that respondent took K.E., Jr. to the hospital on two distinct occasions. Nonetheless, we will address the content of each finding in turn. Finding of fact number 15 states:

> On November 30, 2007, the Department learned that [respondent] had taken the minor child to the Emergency Room at Mission/St. Joseph Hospital because the minor child was wandering the streets barefooted, and was extremely agitated. It was winter time in Asheville and it was detrimental to the minor child to be walking outside barefooted. During this visit to the emergency room, the minor child disclosed to hospital staff that he was having hallucinations and hearing voices in his head. The attending physician, Dr. Tom Berner,

> stated that the minor child needed to have treatment in the next 24 hours. Dr. Berner was also concerned that the maternal grandmother was a barrier to the minor child receiving proper care and may be contributing to the minor child's mental health issues.

Like finding of fact number 10, this finding also begins by stating the contents of a report DSS received, but then goes on to frame the finding in terms of proven fact. We find clear and convincing evidence in the record to support the first two sentences of this finding, which describe the content and context of the 30 November 2007 report. However, the remainder of the finding is more problematic. To begin, it does not distinguish between K.E., Jr.'s two separate visits to the hospital. Dr. Berner's testimony clearly distinguished between the two visits, because he had less contact with respondent on 30 November 2007. Although Dr. Berner recalled that K.E., Jr. had struck a nurse on 30 November 2007, he testified that his interaction on that day was "much briefer." He merely "thanked [respondent] for bringing [K.E., Jr.] back" and then initiated the psych clinician involvement, before the process broke down.

Dr. Berner's testimony regarding the 29 November 2007 visit does not support this finding either. Dr. Berner testified that, in his opinion, K.E., Jr. needed a psychiatric evaluation, and Dr. Berner explained that his involvement normally ends at that point. He never went so far as to state that respondent was the cause of K.E., Jr.'s mental health issues or that K.E., Jr. needed treatment in the next 24 hours. Indeed, he could not, because he "drops out" of the picture once the psychiatric clinician is involved. Dr.

Berner also stated the following: "Well, let me just point out that we felt he was safe, he was not suicidal. And that we couldn't restrain him against his will or his grandmother's even though we encouraged them to stay. . . ." While we recognize that Dr. Berner certainly had some misgivings about respondent, we conclude that finding of fact number 15 is not representative of Dr. Berner's testimony. Therefore, we determine that it was not supported by clear and convincing evidence.

Finding of fact number 16 states that respondent "refused to allow the doctors to fully treat the minor child because of her paranoid behaviors" and that she "removed the minor child from the hospital against medical advice." Dr. Berner certainly testified that respondent was "frustrating" and that, in his opinion, K.E., Jr. should have stayed for a psychiatric evaluation on 29 November 2007. Nonetheless, Dr. Berner specifically testified that he believed K.E., Jr. was safe and that their departure from the hospital on 29 November 2007 was not "against medical advice":

> We did not go to the extent of formalizing – by having the patient or the patient's grandmother sign a statement that they were leaving against medical advice, we, we simply stated we thought it best that he stay for a complete evaluation and that he could return at any time.

Dr. Berner's recount of 30 November 2007 does not support finding of fact number 16. He did not recall respondent threatening to remove K.E., Jr. Dr. Berner also testified he was in the process of initiating a psychiatric evaluation when K.E., Jr. struck a

nurse, which interrupted the process and led to the involuntary commitment petition.

Moreover, the trial court made no specific findings that respondent was indeed "paranoid" and that her "paranoia" likewise prevented K.E., Jr. from receiving treatment. A trial court's findings must consist of more than a recitation of the allegations contained in the petition. *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004). Although the trial court is allowed to make inferences based on the evidence, the trial court must find the "'ultimate facts essential to support the conclusions of law.'" *Id.* (quoting *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003)). Thus, the findings of fact "must be 'sufficiently specific'" to allow appellate review. *Id.* (quoting *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)).

Here, the trial court's finding was not sufficiently specific, but was rather a recitation of the allegations from the petition. Although the term "paranoia" is often used casually, it is also a defined medical condition: it is "a psychosis characterized by systematized delusions of persecution or grandeur usually without hallucinations." Merriam-Webster's Collegiate Dictionary 843 (10th ed. 1995). The trial court made no findings that respondent actually suffers from paranoia. Nor did it make any findings that respondent met the casual definition, that she had "a tendency on the part of an individual or group toward excessive or irrational suspiciousness or distrustfulness of others." *See id.* Instead, the trial court used this conclusory term without any findings to

support it. Therefore, we find that the trial court erred in finding of fact number 16.

Finding of fact number 17 describes Ms. Galloway's testimony regarding her meeting with respondent and K.E., Jr. on 30 November 2007:

> On November 30, 2007, [Ms.] Galloway responded to the home of [respondent]. [Respondent] admitted to removing the minor child against medical advice. [Ms.] Galloway emphasized to [respondent] that the minor child needed immediate medical attention for his mental health needs. [Respondent] agreed to return to the hospital with the minor child right away.

We find that Ms. Galloway's testimony supports this finding. Although Dr. Berner confirmed that respondent did not actually remove K.E., Jr. against medical advice, this finding only outlines Ms. Galloway's recount of the discussion. Ms. Galloway testified that respondent admitted to removing K.E., Jr. against medical advice. Therefore, it is competent to support finding number 17.

Finding of fact number 18 states:

> [Respondent] took the minor child to the hospital and [Ms.] Galloway attended her other cases. A couple of hours later, [Ms.] Galloway received a phone call from social worker supervisor Helen Murrell asking [Ms.] Galloway to go to the hospital. At the hospital, Mission Hospital [social worker] Eleanor Jones informed [Ms.] Galloway that the minor child had attempted to strike a nurse and had to be restrained both chemically and physically. [Ms.] Jones also said that [respondent] was agitated and uncooperative and was threatening to remove the child against medical advice once again.

We initially note that clear and convincing evidence supports the first sentence of the finding, that respondent took K.E., Jr. to the hospital and Ms. Galloway attended to her other cases.

However, the remainder of this finding is not supported by clear and convincing evidence. Although Ms. Galloway gave general testimony regarding her visit to the hospital on 30 November 2007, she failed to specify that Helen Murrell asked her to go to the hospital, or that she spoke with Eleanor Jones at the hospital. Indeed, Ms. Galloway testified that, when she arrived at the hospital, she saw that K.E., Jr. was physically and chemically restrained and that respondent was upset about him being restrained. However, she also testified that she had no personal knowledge of what happened to K.E., Jr. at the hospital prior to her arrival, and did not offer testimony detailing her conversation with Ms. Jones. Such testimony is not competent to support the remaining portions of finding of fact number 18.

Finding of fact number 19 states:

> At the hospital, [respondent] was out of control, demanding that her grandson be returned to her and making claims that the hospital staff was abusing the minor child. [Ms.] Galloway asked [respondent] if she would allow the hospital to treat the minor child. [Respondent] refused to allow the doctors to treat the minor child.

This finding represents only part of what happened at the hospital. Ms. Galloway testified that respondent was unhappy with some of the procedures at Mission, did not want K.E., Jr. treated there, and wanted to remove him. Ms. Galloway also testified that respondent

claimed the staff was abusing K.E., Jr. and discriminating against her. However, this finding leaves out key portions of Ms. Galloway's testimony. Ms. Galloway also testified that respondent was upset because K.E., Jr. had been restrained without her consent, because she was not allowed to accompany him into the emergency room, and because the staff was not updating her.

More importantly, on more than one occasion, Ms. Galloway clarified that respondent did not deny K.E., Jr. treatment outright, she just did not want him treated at Mission. Ms. Galloway could not remember the name of the place where respondent wanted to take K.E., Jr. This exchange on cross-examination is telling:

> Q. Okay. And she told you she didn't want him treated at Mission, is that right?
>
> A. That's correct.
>
> Q. She didn't say she didn't want, want him treated at all, correct?
>
> A. When I posed the question will you allow him treatment um, she said she would take him somewhere else.
>
> Q. She just didn't want him treated at Mission? Right?
>
> A. That's correct.

Furthermore, while we find respondent's behavior somewhat peculiar, we conclude that the trial court again did not make any specific findings to support the conclusory description of respondent as "out of control," which was a mere recitation of an allegation contained in the petition. See *O.W.*, 164 N.C. App. at 702, 596

S.E.2d at 853 (findings must be specific and not a mere recitation of the allegations).

Finding of fact number 20 states that "[t]he hospital staff decided to seek involuntary commitment of the minor child due to his attempt to strike a nurse and for fear that the minor child was a danger to himself and others." This finding is based on Dr. Berner's testimony. Dr. Berner testified that the hospital staff took out an involuntary commitment petition because K.E., Jr. "struck one of our nurses right in the face, unexpectedly and without provocation." However, Dr. Berner never testified that the hospital staff took out the petition because K.E., Jr. was a danger to himself and others. In fact, when asked what potential harm K.E., Jr. would have to himself and others if released, Dr. Berner answered, "[w]ell I don't know that there's a physical danger, if you mean anything of that sort. He didn't express any tendency to harm himself." Dr. Berner explained that the petition was taken out because, "there's no sense that he would get better without treatment." Therefore, we find that this finding is not supported by clear and convincing evidence.

Finally, finding of fact number 21 states: "Due to the minor child's severe mental health and physical needs, there were no other appropriate child care arrangements for the minor child at the time of filing the Juvenile Petition." After our review of the record, we find that DSS did not introduce any competent adjudicatory evidence to support this finding. Although respondent lived with her daughter and her daughter's son (i.e., K.E., Jr.'s

aunt and cousin), the only specific, nonconclusory evidence regarding K.E., Jr.'s aunt as a potential placement was contained in the GAL's disposition report. However, disposition evidence cannot be used to support the trial court's adjudicatory findings of fact. *See* N.C. Gen. Stat. § 7B-808(a); *Barkley*, 61 N.C. App. at 271, 300 S.E.2d at 716 (indicating that it is error for a trial court to consider dispositional evidence for the purpose of finding adjudicatory facts). Therefore, any evidence regarding the appropriateness of K.E., Jr.'s aunt as a caretaker was not competent to support this adjudicatory finding. Accordingly, we find that finding of fact number 21 is not supported by competent evidence.

II

We next turn to respondent's argument that the trial court erred in concluding that K.E., Jr. was a neglected juvenile. A neglected juvenile is defined 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. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2007). The trial court found two grounds for neglect in finding of fact number 23 and conclusion of

law number 2: (1) that K.E., Jr. did not receive proper care, supervision, or discipline from respondent and (2) that K.E., Jr. was not provided the necessary remedial care. We hold that the competent findings of fact do not support either ground for neglect, and we address each in turn.

After reviewing the record, we find only one piece of evidence which could possibly support the conclusion that K.E., Jr. did not receive proper care, supervision, or discipline from respondent. Most of the findings relate to K.E., Jr.'s visits to the emergency room on 29 and 30 November 2007, and the only finding regarding respondent's care, supervision, and discipline is related to the event that triggered the first hospital visit. In finding of fact number 15, the court found that, respondent had "taken the minor child to the Emergency Room at Mission/St. Joseph Hospital because the minor child was wandering the streets barefooted, and was extremely agitated. It was winter time in Asheville and it was detrimental to the minor child to be walking outside barefooted."

Thus, the only evidence of lack of supervision, care, or discipline is that, on one occasion, a seventeen-year-old boy was wandering the streets unaccompanied with shoes. We acknowledge that being barefooted in Asheville in late November could certainly be detrimental to one's health, but "[a] parent's conduct must be viewed on a case-by-case basis on the totality of the evidence." *In re A.E.*, 171 N.C. App. 675, 682, 615 S.E.2d 53, 58 (2005). With nothing more, this evidence does not sufficiently demonstrate respondent failed to provide K.E., Jr. with proper supervision,

care, or discipline. Furthermore, our Supreme Court has stated that "not every act of negligence on the part of parents or other care givers constitutes 'neglect' under the law and results in a 'neglected juvenile.'" *See In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003). Therefore, we conclude the findings of fact do not support the trial court's conclusion that K.E., Jr. was neglected due to lack of supervision, care, or discipline.

The second ground for neglect is that K.E., Jr. was not provided with necessarily remedial care. Neither the General Statutes nor the case law distinguish between remedial care and medical care. *See* N.C. Gen. Stat. § 7B-105(15) (2007); *In re Bell*, 107 N.C. App. 566, 421 S.E.2d 590 (1992) (finding that children failed to receive proper remedial care where parents kept children out of a free day care which would have provided); *In re Huber*, 57 N.C. App. 453, 458, 291 S.E.2d 916, 919, *appeal dismissed and disc. review denied*, 306 N.C. 557, 294 S.E.2d 223 (1982) (discussing parent's failure to provide juvenile with treatment and therapy as a failure to provide medical and remedial care). In the context of remedial and medical care, this Court has stated that "[t]o deprive a child of the opportunity for normal growth and development is perhaps the greatest neglect a parent can impose upon a child." *Huber*, 57 N.C. App. at 458, 291 S.E.2d at 919.

The evidence in the instant case does not support the conclusion that K.E., Jr. was neglected due to any failure to provide remedial care. We have previously found neglect where a parent completely refused to provide her child with medical care or

treatment. *Id.; see also Bell*, 107 N.C. App. at 569-70, 421 S.E.2d at 592 (parents refused to send children to day care, where they could receive supervision, nutrition, and medical care); *In re Thompson*, 64 N.C. App. 95, 101, 306 S.E.2d 792, 795-96 (1983) (where parent refused to allow child to be evaluated to determine if she is developing normally and to receive recommended treatment). Here, respondent has not refused treatment for K.E., Jr. Rather, the record demonstrates that she took various steps to have him treated. Before DSS was even involved in the case, respondent took K.E., Jr. to Copestone Psychiatric Unit. Respondent also took K.E., Jr. to the emergency room on 29 November 2007 on her own initiative. She was concerned about K.E., Jr.'s health, which both Ms. Galloway and Dr. Berner admitted. When Ms. Galloway met with respondent on 30 November, she admitted that K.E., Jr. needed treatment and agreed to return to the hospital.

While the evidence certainly demonstrates that respondent was agitated and frustrated with the hospital staff, it does not support a finding that respondent denied K.E., Jr. treatment outright. Instead, the evidence shows that she acknowledged K.E., Jr. needed help, but became upset and frustrated with the staff at Mission and did not want him treated there. Based on the foregoing, we do not find a complete refusal on the part of respondent to allow K.E., Jr. treatment. Therefore, we conclude that the findings of fact do not support the conclusion that K.E., Jr. was not provided with necessary remedial care.

III

Finally, we address respondent's argument that the trial court erred in concluding that K.E., Jr. was a dependent juvenile. A dependent juvenile is defined as one "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 is required to "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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

Here, the competent findings of fact do not support the conclusion that K.E., Jr. was a dependent juvenile. As we previously discussed in connection with the finding of neglect, the trial court's conclusion that K.E., Jr. did not receive proper care, supervision, or discipline is not supported by competent findings of fact. Moreover, the only finding of fact that supports the second prong of this definition is finding number 21, which states that "[d]ue to the minor child's severe mental health and physical needs, there were no other appropriate child care arrangements for the minor child at the time of filing the Juvenile Petition." As we have already explained, finding of fact number 21 is not supported by competent evidence, and therefore it does not support the conclusion that K.E., Jr. was a dependent juvenile. Accordingly, we hold that the trial court erred in concluding that K.E., Jr. was dependent.

In conclusion, we determine that (1) adjudicatory finding of fact numbers 10, 11, 14-16, and 18-21 are not supported by competent evidence; (2) the findings of fact do not support the conclusion that K.E., Jr. was a neglected juvenile; and (3) the findings of fact do not support the conclusion that K.E., Jr. was a dependent juvenile. Accordingly, we vacate the decision of the Buncombe County District Court.

Vacated.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).