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NO. COA13-161  
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

IN THE MATTER OF:

A.W., C.P.

Chatham County  
No. 12 JA 32, 33

Appeal by mother from order entered 25 October 2012 by Judge Joseph Moody Buckner in Chatham County District Court.

Heard in the Court of Appeals 5 August 2013.

*J. Lee Gilliam, Assistant Appellate Defender, for mother-appellant.*

*Tawanda N. Foster for Guardian ad Litem-appellee.*

*Northen Blue, LLP, by Carol J. Holcomb and Samantha H. Cabe, for Chatham County Department of Social Services-appellee.*

STEELMAN, Judge.

Where the trial court's extraneous findings were not essential to its ultimate holding, any error was harmless. Where unchallenged evidence in the record supported the trial court's findings of fact and conclusions of law, the trial court did not abuse its discretion in concluding that the children

were neglected. Where the children had been previously placed with a kinship caretaker, the trial court erred in adjudicating the children dependent. Where the trial court failed to give clear instructions as to the time, place, and conditions imposed on visitation, we remand this portion of the order to the trial court for entry of additional instructions.<sup>1</sup>

### I. Factual and Procedural History

In July 2011, Belinda Patterson (mother) placed her children, A.W. and C.P. (the children) in the care of her niece Linda, in Chatham County, where they had lived "off and on since November, 2010[.]" On 23 September 2011, Chatham County Department of Social Services (DSS) received a report alleging that the children were sexually abused, improperly supervised and living in an injurious environment when they lived with mother. On 22 June 2012, DSS filed petitions, alleging that the children were abused, neglected and dependent juveniles.

On 26 October 2012, the trial court entered its adjudication and disposition order. The trial court found that, during the investigation, mother had moved at least four times;

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<sup>1</sup> The General Assembly recently amended the statutes dealing with juvenile proceedings, including § 7B-905(c), § 7B-906(b), and § 7B-907(b). 2013 North Carolina Laws S.L. 2013-129. As this action was filed prior to the amendments' effective date of 1 October 2013, the amendments do not apply to this case.

had at least seven telephone numbers; was unemployed and had no verifiable income; and that as of the summer of 2012, mother began living in public housing with her boyfriend and two children who are not the subject of these proceedings. The trial court further found that the children had suffered various minor injuries which were inconsistent with mother's explanations of how they occurred; that upon returning from a trip with mother, the children were dirty and hungry, and stated that they had "hardly seen [] mother while they were away[;]" that during this trip they stayed with mother's boyfriend who was subsequently arrested for trafficking by possession and transportation; that while the children were staying with Linda, mother rarely called or requested visits; that while the children were staying with mother, they were frequently "being placed with different people, being poorly supervised and left home alone[;]" and that when Linda took them to a doctor, the children were found to be "about a year behind on their immunizations." The trial court also found that mother admitted to using marijuana.

The trial court concluded that the children were neglected pursuant to N.C. Gen. Stat. § 7B-101(15) in that they did not receive proper care, supervision or discipline from mother, and

in that they lived in an environment injurious to their welfare. The trial court concluded that the children were dependent pursuant to N.C. Gen. Stat. § 7B-101(9) in that their parents were unable to provide for their care or supervision and lacked an appropriate child care arrangement. The trial court ordered that the children remain in custody of DSS, placed in the care of Linda, with weekly supervised visits from mother. Mother was further ordered to participate in a case plan.

Mother appeals.

## II. Standard of Review

"The role of this Court in reviewing a trial court's adjudication of neglect and abuse is to determine '(1) whether the findings of fact are supported by 'clear and convincing evidence,' and (2) whether the legal conclusions are supported by the findings of fact[.]'" *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). "If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary." *Id.*

"The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. . . . We review a dispositional order only for abuse of discretion." *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008) (citing *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002), *cert. denied*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003)).

III. Findings Outside the Scope of Petition

In her first argument, mother contends that the trial court erred by making findings outside of the scope of the petition. We disagree.

The petitions by DSS alleged that the children were sexually abused; that they had been exposed to and witnessed substance abuse; that they were behind on immunizations; that mother was difficult to reach due to her changing address and phone number; that the children returned from their trip smelling as if they hadn't bathed; that they did not stay with their mother; and that one caregiver with whom mother had placed the children was later arrested for trafficking, sale and delivery of drugs. In its findings, the trial court found as fact many of these allegations. The trial court also found that

mother had received food stamps, housing assistance and child support for the children despite not caring for them. Mother contends that these specific findings were erroneous.

Mother cites to N.C. Gen. Stat. § 7B-802, which mandates that the trial court adjudicate the existence or nonexistence of the conditions alleged in a petition.

We acknowledge that the trial court erred in making these specific extraneous findings. We nonetheless hold that this error was harmless. The findings of fact listed above which mother does not challenge are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). These unchallenged findings, exclusive of the challenged findings, are sufficient to support the trial court's conclusions of law. Where ample other findings support the trial court's decision on neglect, the inclusion of erroneous findings is harmless error. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240-41 (2006).

This argument is without merit.

### III. Neglected Juveniles

In her second argument, mother contends that the trial court erred in concluding that the children were neglected juveniles. We disagree.

Mother first contends that the children were not neglected, because they were thriving in Linda's care. Mother contends that the finding of neglect was an attempt to assign fault to mother, rather than to examine the current circumstances of the children.

It is true that mother's placement of the children in her niece's care was a positive step. However, the harms enumerated in the trial court's findings were harms that transpired while the children were in mother's care, not while they were in Linda's care. We have previously held that, even when a juvenile has been placed with a family member, the juvenile may nonetheless be adjudicated neglected when the parent is unable to care for the child, when the parent is unable to correct the conditions which caused placement with the family member, and when the parent lacks stable housing or income. See *In re K.J.D.*, 203 N.C. App. 653, 661, 692 S.E.2d 437, 444 (2010). In the instant case, evidence in the record showed that mother did not enjoy stable housing or income, used marijuana, and did not bathe her children or spend time with them. The trial court did not abuse its discretion in examining the circumstances and conditions of the children while they stayed with mother, even though they were presently in the care of Linda.

Mother next challenges several findings of fact which support a conclusion of neglect. Specifically, she contends that there was not clear and convincing evidence to support the trial court's findings that there was a history of referrals to child protective services in multiple counties, that the children stayed with mother's boyfriend who was later arrested for drug trafficking, and that the children were placed with multiple caregivers who left them unsupervised. Even assuming *arguendo* that these findings of fact were not supported by clear and convincing evidence, we hold that there were still ample supported findings to support a conclusion of neglect.

Mother also contends that the trial court's findings were too general, and that they failed to establish a risk of harm to the children. While it is generally true that findings of actual or substantial risk of harm are necessary to support an adjudication of neglect, we have held that an adjudication lacking such findings may nonetheless be affirmed when "all the evidence supports such a finding." *In re Safriet*, 112 N.C. App. 747, 753, 436 S.E.2d 898, 902 (1993). In the instant case, the record showed that the children were filthy, behind on their immunizations, frequently injured, and exposed to sexual abuse and drug abuse. These facts support a conclusion of neglect.



Because the evidence in the record supports the trial court's findings of fact, and the findings support the trial court's conclusions of law, we hold that the trial court did not abuse its discretion in concluding that the children were neglected juveniles.

This argument is without merit.

#### IV. Dependent Juveniles

In her third argument, mother contends that the trial court erred in concluding that the children were dependent juveniles. We agree.

Pursuant to N.C. Gen. Stat. § 7B-101(9), a juvenile is dependent because of a lack of a caregiver, requiring the State to intercede. Mother argues that she placed her children in the custody of her niece, in whose care the children were thriving.

We have previously held that, under the statutory definition of "dependent juvenile" provided by N.C. Gen. Stat. § 7B-101(9), "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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). In the instant case, the trial court addressed mother's failure to care for the children. This alone, however, is insufficient;

the trial court must also find an absence of alternative child care arrangements, requiring action by the State. Here, the record shows the existence of an alternative child care arrangement, and that the children were thriving in kinship placement. Because the trial court failed to correctly apply the second prong of this analysis, we hold that it erred in concluding that the children were dependent juveniles.

#### V. Visitation Schedule

In her fourth argument, mother contends that the trial court erred in outlining the time, place, and conditions under which she may exercise her weekly visits with the children. We agree.

In its adjudication and disposition, the trial court ordered that “[v]isits with [mother] shall be supervised and shall occur weekly.” Mother correctly observes that a visitation plan lacking details regarding time, place, and conditions of visitation must be remanded for clarification of a respondent’s visitation rights. See *In re K.S.*, 183 N.C. App. 315, 330-31, 646 S.E.2d 541, 549-50 (2007); *In re E.C.*, 174 N.C. App. 517, 523, 621 S.E.2d 647, 652 (2005). These cases relied on N.C. Gen. Stat. § 7B-905(c), which states in relevant part that “[a]ny 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." N.C. Gen. Stat. § 7B-905(c) (emphasis added).

We have previously held that a visitation plan offering supervised visitation every other week, which may be reduced to monthly based on the parent's conduct, lacked these vital details and was remanded for further findings and clearer instructions on visitation. *In re J.P.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 742 S.E.2d 853, 857-58 (2013). In the instant case, the proposed plan of weekly supervised visits offers even less structure than that found in *In re J.P.* We hold that the trial court's order of weekly visits, absent more detail, is inadequate. We vacate this portion of the order and remand to the trial court for further findings and clear instructions as to the time, place and conditions under which mother may exercise her weekly visits.

#### VI. Conclusion

The trial court's findings of fact that were beyond the scope of the petition were harmless error. The trial court did

not err in concluding that the children were neglected juveniles. The trial court erred in concluding that the children were dependent juveniles. The trial court erred in failing to set forth specific time, place, and conditions for mother's visitation with the children. We remand this matter to the trial court for entry of an order setting forth the time, place, and conditions of mother's visitation with the juveniles.

AFFIRMED IN PART, REVERSED IN PART, VACATED AND REMANDED IN PART.

Chief Judge MARTIN and Judge DILLON concur.

Report per Rule 30(e).