NO. COA13-172
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

IN THE MATTER OF:

A.H.L.
E.C.L.
L.R.L.
Juveniles

Haywood County
No. 07 JA 93-95

Appeal by respondents from orders entered 24 September 2012 and 26 November 2012 by Judge Monica H. Leslie in Haywood County District Court. Heard in the Court of Appeals 11 June 2013.

Rachael J. Hawes for Haywood County Department of Social Services.

J. Thomas Diepenbrock for respondent-mother.

Michael E. Casterline for respondent-father.

Administrative Office of the Courts, by Tawanda N. Foster, for guardian ad litem.

ERVIN, Judge.

Respondent-Father Scott L. and Respondent-Mother Elizabeth L. appeal from orders adjudicating their minor children, A.H.L.,

E.C.L., and L.R.L.,[1] to be abused, neglected, and dependent juveniles and adopting a disposition and a permanent plan involving legal guardianship for the children. On appeal, Respondent-Parents allege that the trial court lacked jurisdiction to hear the petition; that the trial court's determinations that the children were abused, neglected, and dependent juveniles lacked adequate support in the trial court's findings of fact; that the trial court erred by failing to make the findings necessary to support a decision to authorize DSS to cease attempting to reunite the children with Respondent-Parents; and that the trial court committed numerous errors stemming from the breach of an alleged agreement between Respondent-Parents and the Haywood County Department of Social Services. After careful consideration of Respondent-Parents' challenges to the trial court's orders in light of the record and the applicable law, we conclude that the trial court's orders should, with the exception of the trial court's determination that the children were abused juveniles, be affirmed.

I. Factual Background

[1]The pseudonyms "Allison," "Elsie," and "Lucas" are used throughout the remainder of this opinion for ease of reading and to protect the juveniles' privacy.

On 14 June 2007, DSS filed juvenile petitions alleging that the children were neglected and dependent juveniles. On 2 August 2007, Judge Bradley B. Letts entered an order adjudicating Allison, Elsie, and Lucas to be neglected and dependent juveniles. On 22 October 2008, Judge Richard K. Walker entered an order relieving DSS of the responsibility for making further efforts to reunify the children with Respondent-Parents. After obtaining a favorable home study pursuant to the Interstate Compact for the Placement of Children, Judge Richlyn D. Holt entered an order on 15 April 2009 awarding legal guardianship to the children's adult half-sister, Beth Nelson, who resided in Texas. The Haywood County District Court held review hearings through 13 October 2009, a period during which Texas Child Protective Services monitored the condition of the children while they lived in Ms. Nelson's home. On 22 April 2010, the court entered an order "waiv[ing] further review hearings in this matter, pursuant to N.C. [Gen. Stat. §] 7B-906(b), unless a party to this action files a [m]otion for review."

On 28 June 2012, DSS filed new petitions alleging that Allison, Elsie, and Lucas were abused, neglected, and dependent juveniles after learning that they were living with their former foster parents in Haywood County. In addition, DSS alleged that

Texas CPS had failed to inform DSS that Ms. Nelson had returned the children to Respondent-Parents in April 2010; that Texas CPS had obtained custody of the children after filing a juvenile petition in Texas on 9 August 2010; and that a Texas court had appointed Respondent-Parents as the children's Joint Managing Conservators, "with all regular rights available to custodial parents," on 3 October 2011. After the children ran away from Respondent-Parents' home on 19 April 2012, Texas CPS approached the Haywood County foster parents with a request that they allow the children to live with them while Respondent-Parents sought employment in Florida. Despite the fact that the foster parents understood that this arrangement was a temporary one, the Texas court found that permanency had been achieved by placing the children with their former foster parents. According to DSS, the children had been living with their former foster parents since early May 2012. Although Respondent-Parents agreed to this placement in a meeting with Texas CPS held on 25 April 2012, "Texas CPS did not inform ICPC of this plan, did not request ICPC services or approval, and did not inform [DSS]." At the time DSS filed the juvenile petitions, Respondent-Father was staying in a motel in Haywood County while Respondent-Mother's whereabouts were unknown.

After a hearing held on 4 September 2012, the trial court entered an order on 24 September 2012 adjudicating the children to be abused, neglected, and dependent juveniles. The trial court continued the dispositional hearing until October 2012, at which time a combined dispositional and permanency planning hearing was to be held. In a disposition and permanency planning review order entered 26 November 2012 following a hearing held on 30 October 2012, the trial court concluded that it had "continuing jurisdiction" in this matter after determining that Respondent-Parents had "received custody of the children [in Texas] in violation of valid North Carolina Orders;" that, since it had relieved DSS of any obligation to attempt to reunify the children with Respondent-Parents in 2008, guardianship remained the permanent plan for the children; and that the children's Haywood County foster parents should serve as the children's guardians. Respondent-Parents noted appeals to this Court from the trial court's orders.

II. Legal Analysis

A. Appealability

As an initial matter, we must address the adequacy of Respondent-Mother's notice of appeal from the 24 September 2012 adjudication order and the 26 November 2012 disposition and permanency planning review order. Respondent-Mother's notice of

appeal provided, in relevant part, that she was appealing from "the Review Order relieving DSS of further reasonable efforts and changing to a permanent plan of legal guardianship that was filed on November 26, 2012." DSS has requested that this Court dismiss Respondent-Mother's appeal from the adjudication and disposition and permanency planning orders on the ground that her notice of appeal failed to designate either the 24 September 2012 adjudication order or the 26 November 2012 disposition and permanency planning order as orders from which her appeal had been taken. Although we agree with DSS' contention, in part, we conclude that we should review the issues raised in Respondent-Mother's brief.

According to N.C.R. App. P. 3(d), a notice of appeal "shall designate the judgment or order from which appeal is taken." We have previously found that a notice of appeal that only specified a single order from which an appeal had been noted did not suffice to provide this Court with jurisdiction to review the parent's challenge to a number of different orders. *See In re D.R.F.*, 204 N.C. App. 138, 141, 693 S.E.2d 235, 238 (stating that, "[i]n the case *sub judice*, respondents appeal only the 1 October 2009 disposition order, according to their respective notices of appeal," so that "the 7 August 2009 adjudication order remains valid and final," precluding us from "address[ing]

respondents' alleged errors as to that order"), *disc. review denied*, 364 N.C. 616, 705 S.E.2d 358, 359 (2010). As a result, given that Respondent-Mother's notice of appeal makes no reference whatsoever to the 24 September 2012 adjudication order, her notice does not suffice to give this Court jurisdiction over her challenge to that order. However, we exercise our discretion under N.C.R. App. P. 21 to allow Respondent-Mother's petition for the issuance of a writ of *certiorari* in order to consider her challenge to the trial court's adjudication order.

Although she could have designated the 26 November 2012 dispositional and permanency planning order with greater clarity in her notice of appeal, we are able to infer from Respondent-Mother's notice of appeal that she intended to seek appellate review of that order. Simply put, Respondent-Mother's notice of appeal gives the correct date for the order in question and adequately describes certain of the decisions which are embodied in that order. As a result of that fact and the fact that DSS does not appear to have had any trouble responding to Respondent-Mother's challenges to the 26 November 2012 order, we conclude that Respondent-Mother's notice of appeal was sufficient to give this Court jurisdiction over her challenge to that order. *See Chee v. Estes*, 117 N.C. App. 450, 452, 451

S.E.2d 349, 351 (1994) (holding that, "if the appellant made a mistake in designating the judgment intended to be appealed, then the appeal will not be dismissed if the intent to appeal from the judgment can be fairly inferred from the notice and the appellee was not misled by the mistake"). Thus, we will consider Respondent-Mother's challenges to both the 24 September 2012 and 26 November 2012 orders.[2]

B. Subject Matter Jurisdiction

1. Uniform Child Custody Jurisdiction and Enforcement Act

As an initial matter, Respondent-Parents challenge the trial court's orders on the grounds that the UCCJEA precluded the trial court from modifying the 2011 Texas order making Respondent-Parents conservators for the children. According to Respondent-Parents, the fact that the Texas courts had jurisdiction over the relationship between Respondent-Parents and the children deprived the trial court of jurisdiction to enter the 24 September 2012 adjudication and 26 November 2012 disposition and permanency planning orders. We do not find Respondent-Parents' argument persuasive.

[2]As DSS notes, however, there is no indication in the record that Respondent-Mother has ever attempted to appeal the original 2008 order allowing DSS to cease making reasonable efforts to reunify the children with Respondent-Parents and changing the permanent plan for the children to guardianship. For that reason, Respondent-Mother has lost the right to challenge the 2008 permanency planning order before this Court.

"The issue of subject matter jurisdiction may be considered by the court at any time, and may be raised for the first time on appeal." *In re T.B.*, 177 N.C. App. 790, 791, 629 S.E.2d 895, 896-97 (2006). The extent to which a trial court has jurisdiction over the subject matter of a particular case is a question of law subject to *de novo* review on appeal. *In re K.U.-S.G.*, 208 N.C. App. 128, 131, 702 S.E.2d 103, 105 (2010). As a result, we will review Respondent-Parents' jurisdictional challenge to the trial court's orders using a *de novo* standard of review.

The District Court Division of the General Court of Justice "has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent." N.C. Gen. Stat. § 7B-200(a). The extent to which a North Carolina court has jurisdiction in an interstate child custody matter is governed by the provisions of the UCCJEA as enacted in North Carolina and the provisions of the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2006), both of which set forth "'substantially the same jurisdictional prerequisites.'" *Jones v. Whimper*, __ N.C. App. __, __, 727 S.E.2d 700, 702 (2012) (quoting *Potter v. Potter*, 131 N.C. App. 1, 4, 505 S.E.2d 147, 149 (1998)), *aff'd in part and vacated in part on other grounds*, __ N.C. __, 736 S.E.2d 170 (2013). North

Carolina and Texas have adopted similar versions of the UCCJEA with respect to the matters at issue in this case. *Compare* N.C. Gen. Stat. § 50A-101 *et seq*. *with* Tex. Fam. Code Ann. § 152.101 *et seq*. (West 2011).

"The first provision of the UCCJEA, N.C. Gen. Stat. § 50A-201, 'addresses the jurisdictional requirements for initial child-custody determinations.'" *In re K.U.-S.G.*, 208 N.C. App. at 132, 702 S.E.2d at 106 (quoting *In re J.W.S.*, 194 N.C. App. 439, 446, 669 S.E.2d 850, 854 (2008)). In UCCJEA parlance, the "'initial determination'" refers to "'the first child-custody determination concerning a particular child.'" *Id*. (quoting N.C. Gen. Stat. § 50A-102(8)). As we read the record, the Haywood County District Court clearly had jurisdiction to make an initial determination regarding the children in 2007. *See* N.C. Gen. Stat. § 50A-201(a).

The UCCJEA vests a North Carolina court that has made a valid initial determination with "exclusive, continuing jurisdiction" until (1) the North Carolina court "determines that neither the child, the child's parents, and any person acting as a parent do not [sic] have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships," N.C. Gen. Stat. § 50A-

202(a)(1); (2) a court in any state "determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State," N.C. Gen. Stat. § 50A-202(a)(2); or (3) a court of another state exercises temporary emergency jurisdiction. N.C. Gen. Stat. § 50A-204. None of the three statutorily specified events have occurred in this case.

The record before us clearly indicates that the Haywood County District Court exercised its continuing jurisdiction when it awarded guardianship over the children to Ms. Nelson, who was living in Texas, in April 2009. Although the court waived the necessity for holding further review hearings pursuant to N.C. Gen. Stat. § 7B-906(b) in its 22 April 2010 order, it retained jurisdiction over this case. *See* N.C. Gen. Stat. §§ 7B-906(b) and 7B-1000(a). As a result, the Haywood County District Court never ceded jurisdiction under the UCCJEA, N.C. Gen. Stat. § 50A-202(a), to Texas or any other jurisdiction.

In light of the fact that the Haywood County District Court made an initial custody determination, the 2011 Texas order making Respondent-Parents conservators of the children represented a "modification" order for purposes of the UCCJEA. N.C. Gen. Stat. § 50A-102(11). Although the relevant provisions of the UCCJEA require North Carolina courts to "recognize and enforce a child-custody determination of a court of another

state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article," N.C. Gen. Stat. § 50A-303(a), an order entered by another state without adherence to the jurisdictional standards of the UCCJEA is "null and void." *Davis v. Davis*, 53 N.C. App. 531, 542, 281 S.E.2d 411, 417 (1981) (applying section 13 of the Uniform Child Custody Jurisdiction Act, which was the predecessor to the UCCJEA); official comment to N.C. Gen. Stat. § 50A-303 (noting that "[t]his section is based on Section 13 of the UCCJA [former N.C. Gen. Stat. § 50A-13] which contained the basic duty to enforce" and stating that "[t]he language of the original section has been retained and the duty to enforce is generally the same"). Thus, a valid modification order would interrupt the Haywood County District Court's jurisdiction under the UCCJEA, *see* N.C. Gen. Stat. §§ 50A-202(a) and 50A-203, while an invalid one would not. As a result, the key question which must be answered in order to determine whether the Haywood County District Court had jurisdiction to enter the 24 September 2012 and 26 November 2012 orders is whether the Texas order constituted a valid modification of the earlier North Carolina order.

The trial court answered this question in the negative, determining in both the adjudication and the disposition and permanency planning orders that "Respondent Parents have custody, care and control of the children in violation of valid Haywood County District Court Orders." In reaching this conclusion, the trial court noted in the 26 November 2012 order that, although the Texas court had determined "that no other [co]urt had continuing, exclusive jurisdiction of the case," the Haywood County District Court had retained "continuing jurisdiction in these matters," so that "[j]urisdiction was not relinquished by this Court when the minor children were placed in Legal Guardianship in Texas pursuant to Court Order." We believe that the trial court correctly resolved this jurisdictional issue.

The requirements for modification of an order under the UCCJEA as set out in Texas law are as follows:

> Except as otherwise provided in Section 152.204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 152.201(a)(1) or (2) and:
>
> (1) the court of the other state determines it no longer has exclusive continuing jurisdiction under Section 152.202 or that a court of this state would be a more convenient forum under Section 152.207; or

> (2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Tex. Fam. Code Ann. § 152.203 (West 2008).[3] Respondent-Parents have not suggested that Tex. Fam. Code Ann. § 152.204, which governs temporary emergency jurisdiction, provided the Texas courts with jurisdiction over this case. Similarly, Respondent-Parents have not shown that the Texas court had jurisdiction to modify the North Carolina order based on either Tex. Fam. Code Ann. § 152.203(1) or § 152.203(2). As a result of the fact that the record on appeal does not contain copies of the 2011 Texas order or any other document filed or entered in the Texas proceedings, we are unable to determine whether the Texas court made the determinations necessary to establish that it had the authority to modify the prior Haywood County District Court order. Our inability to make such a determination is fatal to Respondent-Parents' jurisdictional challenge to the trial court's orders.

As the parties raising the issue of subject matter jurisdiction on appeal, Respondent-Parents had the duty to ensure that the record contained all the materials necessary for

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[3]The equivalent provisions in North Carolina law are substantively identical to the Texas statutory language quoted in the text. *See* N.C. Gen. Stat. § 50A-203.

adequate review of this issue, which, given the content of their arguments, would necessarily include the relevant Texas orders. *See Industrotech Constructors, Inc. v. Duke Univ.*, 67 N.C. App. 741, 743, 314 S.E.2d 272, 274 (1984) (holding that "[t]he appellant has the duty of ensuring that the record is properly made up and includes all matters necessary for decision"); N.C.R. App. P. 9(a)(1)(e) (providing that the "record on appeal in civil actions and special proceedings shall contain . . . so much of the litigation, set out in the form provided in Rule 9(c)(l), as is necessary for an understanding of all issues presented on appeal"). However, as we have previously noted, the record on appeal presented for our review does not contain the relevant Texas orders. In addition, despite the fact that the trial court made some findings regarding the Texas order, those findings do not establish that the Texas court had jurisdiction to modify the prior North Carolina order. As a result, nothing in the record shows that the Texas court had jurisdiction to modify the Haywood County District Court's custody determination, necessitating a conclusion that Respondent-Parents have failed to show that the trial court erred by determining that it retained continuing, exclusive jurisdiction in this matter and that it was not obligated to enforce the 2011 Texas order. *See Davis*, 53 N.C. App. at 542,

281 S.E.2d at 417 (stating that, "[s]ince the record does not show that the California court assumed jurisdiction under the standards set forth in [the UCCJEA], its decree is null and void"); *see also Industrotech Constructors*, 67 N.C. App. at 743, 314 S.E.2d at 274 (rejecting an argument to the effect that the parties to an arbitration proceeding had stipulated that the proceeding would remain confidential since (1) no such stipulation appeared in the record, (2) the appellant had the duty of ensuring that the record contained all of the information necessary to permit a proper review of the challenged order, and (3) such a stipulation was not the type of information which the Court was entitled to judicially notice).

In addition to arguing that the trial court lacked jurisdiction over the subject matter of this case under the UCCJEA, Respondent-Parents also contend that the trial court failed to make sufficient findings of fact to establish that it had the subject matter jurisdiction needed to hear and decide this case. Contrary to Respondent-Parents' argument, however, the UCCJEA does not require a trial court to make explicit findings justifying its decision to exercise jurisdiction over a particular case. *In re E.X.J.*, 191 N.C. App. 34, 40, 662 S.E.2d 24, 27 (2008) (rejecting an argument to the effect "that the trial court did not make the necessary findings" establishing

its jurisdiction on the grounds that jurisdiction under N.C. Gen. Stat. §§ 50A-201, 50A-203, and 50A-204 does not require express findings by the trial court and that the trial court had jurisdiction over the case in question as long as the circumstances statutorily required to support an exercise of jurisdiction existed), *aff'd*, 363 N.C. 9, 672 S.E.2d 19 (2009). In addition, the trial court's 24 September 2012 and 26 November 2012 orders included specific findings of fact stating the basis for the trial court's decision to exercise jurisdiction of this case, including findings that the initial custody determination was made in North Carolina, that the North Carolina courts had retained continuing jurisdiction over this case, and that the North Carolina courts had never relinquished jurisdiction over this case to the courts of any other state. As a result, none of Respondent-Parents' UCCJEA-based challenges to the trial court's orders have merit.

2. Summons

In addition to his UCCJEA-based challenge to the trial court's jurisdiction, Respondent-Father argues that the trial court lacked subject matter jurisdiction over this case because no summons was ever issued to or served upon the children's guardian. However, as the Supreme Court has stated, "[a] trial court's subject matter jurisdiction over all stages of a

juvenile case is established when the action is initiated with the filing of a properly verified petition." *In re T.R.P.*, 360 N.C. 588, 593, 636 S.E.2d 787, 792 (2006). As the record clearly reflects, DSS filed verified petitions which complied with the relevant statutory provisions. In addition, a review of the record establishes that the statutorily required summonses were issued to and served upon Respondent-Parents, thereby allowing the Court to exercise personal jurisdiction over them. Thus, any failure to issue or serve a summons upon the children's guardian had no effect on the extent of the trial court's jurisdiction over the subject matter of this case. *See In re K.J.L.*, 363 N.C. 343, 346, 677 S.E.2d 835, 837 (2009) (holding that "the summons is not the vehicle by which a court obtains subject matter jurisdiction over a case, and failure to follow the preferred procedures with respect to the summons does not deprive the court of subject matter jurisdiction").

C. Adequacy of Adjudicatory Findings of Fact

Secondly, Respondent-Parents argue that the trial court failed to make sufficient findings of fact to support its determination that the children were abused, neglected, and dependent juveniles. More specifically, Respondent-Parents contend that many of the trial court's findings relate to issues addressed in prior orders of the Haywood County District Court

or the Texas court, that the trial court's findings did not establish the factual prerequisite for the trial court's adjudicatory decision, and that the trial court's findings overlooked the fact that the children had been "placed in safe and stable alternative childcare arrangements" as of the date upon which the juvenile petitions had been filed. Respondent-Parents' arguments lack merit.

1. Standard of Review

In reviewing an abuse, neglect, or dependency adjudication, we examine whether the trials court's findings of fact are supported by competent evidence and whether the trial court's findings, in turn, support its conclusions of law. *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). "'[W]hen a trial court is required to make findings of fact, *it must make the findings of fact specially*'" and may not, for that reason, "simply recite allegations, but must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law.'" *In re Z.J.T.B.*, 183 N.C. App. 380, 387, 645 S.E.2d 206, 211 (2007) (emphasis in original) (quoting *In re Weiler*, 158 N.C. App. 473, 478, 581 S.E.2d 134, 137 (2003)). As a result of the fact that Respondent-Parents have not objected to the sufficiency of the evidentiary support for any particular

finding of fact, the trial court's findings of fact are binding for purposes of appellate review. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). A trial court's conclusion that a particular juvenile is abused, neglected, or dependent is reviewed *de novo*. *In re N.G.*, 186 N.C. App. 1, 15, 650 S.E.2d 45, 54 (2007), *aff'd*, 362 N.C. 229, 657 S.E.2d 355 (2008).

2. Adequacy of Trial Court's Adjudicatory Findings of Fact

As an initial matter, we find no merit in Respondent-Parents' assertion that the trial court was not entitled to consider events that had occurred prior to the children's placement with their Haywood County foster parents in May of 2012. The circumstances surrounding the 2007 determinations that the children were neglected and dependent juveniles coupled with their subsequent experiences in Texas and North Carolina were clearly relevant to a proper evaluation of the extent to which the petitions filed by DSS on 28 June 2012 had merit. *See In re A.K.*, 360 N.C. 449, 456, 628 S.E.2d 753, 758 (2006) (stating that, "in determining whether a child is a 'neglected juvenile' under Chapter 7B, it is well within the trial court's discretion to assign more weight to multiple prior neglect adjudications than it would to just one"). Thus, the fact that the trial court based its adjudication decisions on findings relating to events which occurred prior to the date upon which

the children were returned to their Haywood County foster parents does not undercut the trial court's adjudication decisions in any way.

We do, however, agree with Respondent-Parents' contention that the trial court's adjudicatory findings fail to support its determination that Allison, Elsie, and Lucas were abused juveniles. An "abused" juvenile is one "whose parent, guardian, custodian, or caretaker . . . [i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means[,] . . . [c]reates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means[,]" or "[c]reates or allows to be created serious emotional damage to the juvenile." N.C. Gen. Stat. § 7B-101(1).

Although the adjudication order contains extensive findings of fact, the trial court never found that any of the children had sustained any physical injury other than a "red mark" that Elsie observed on Lucas' face. In addition, the trial court did not make any findings of fact which tended to show that the children faced a substantial risk of serious harm inflicted by non-accidental means. Although the adjudication order does contain references to the fact that the children had been exposed to domestic violence between Respondent-Parents, each of

these findings consisted of descriptions of reports received by Texas CPS or of statements made by the children to social workers rather than findings that such incidents had, in fact, occurred. Finally, although the trial court's order includes a finding that Elsie and Lucas had been diagnosed as suffering from anxiety-related disorders in September of 2008, the trial court did not find that the children were suffering from serious emotional harm on any date remotely approximating the date upon which the petitions underlying the adjudication order were filed.

In addition to the trial court's failure to find specific facts in support of its determination of abuse, the trial court failed to make findings of "ultimate facts" that showed the basis for the trial court's adjudication decision. *See In re Z.J.T.B.*, 183 N.C. App. at 387, 645 S.E.2d at 211. Instead, the trial court simply found that Allison, Elsie, and Lucas "are Abused juveniles, as defined by N.C.G.S. 7B[-]101(1), for all the reasons stated above." As a result, given these deficiencies in the trial court's findings, we reverse the trial court's adjudication that Allison, Elsie, and Lucas were abused juveniles.

A neglected juvenile is one "who does not receive proper care, supervision, or discipline . . .; or who is not provided

necessary remedial care; or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15). An adjudication of neglect must rest upon "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 Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)) (additional citations and quotation marks omitted)).

In its adjudication order, the trial court noted that the children had previously been determined to be neglected juveniles as a result of having been left unsupervised and as a result of Respondent-Parents' unaddressed substance abuse, mental health, and homelessness problems. In the aftermath of this adjudication of neglect, the court authorized DSS to refrain from attempting to reunite the children with Respondent-Parents and appointed Ms. Nelson to serve as their guardian in 2009. However, Ms. Nelson returned the children to Respondent-Parents' care in 2010. After reports of domestic violence led Texas CPS to take the children into its custody, Respondent-Father was extradited to North Carolina and Respondent-Mother "disappeared for [five] months" without "contact[ing] her

children." Although the Texas court awarded primary custody of the children to Respondent-Father in 2011, it also ordered him or Ms. Nelson to supervise any visitation between the children and Respondent-Mother. After the children were returned to the custody of Respondent-Father, the following incident occurred during a time when Respondent-Mother was apparently solely responsible for caring for the children:

> On April 19, 2012, all three minor children ran away from the home of the Respondent Parents . . . . The children crawled out of a bedroom window and got on a city bus. They were missing for approximately 4 hours . . . . [Elsie] and [Allison] did not have any shoes on when discovered. [Lucas] reported that they ran away because the Respondent Mother gets intoxicated and yells at the children, and they are scared and tired of it. . . . When law enforcement arrived at the home . . ., the Respondent Mother appeared to be intoxicated on prescription drugs. There were several empty pill bottles . . . around the home. The Respondent Mother admitted to drinking two beers, and that she yelled at the children . . . . The Respondent Mother thought the children were playing hide and seek and did not know they were missing. She thought they were only missing for an hour.

The trial court's findings amply demonstrate a lack of proper supervision by Respondent-Parents which had the effect of placing the children at substantial risk of physical or emotional impairment. As a result, we affirm the trial court's determination that the children were neglected juveniles.

Finally, a dependent juvenile is 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). 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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

As was the case with its neglect adjudication, the trial court's order contains sufficient findings to support a determination of dependency. The court had determined in 2008 that the children were dependent and that DSS was authorized to cease attempting to reunify them with Respondent-Parents. In addition, the trial court's findings describe how Ms. Nelson undercut the court's prior custody orders by giving custody of the children to Respondent-Parents after everyone reached Texas. At the time that DSS filed the petitions that underlay the challenged orders, Texas CPS had removed the children from Respondent-Parents' home due to a lack of proper supervision. Finally, the trial court found that "[r]emoval from the home was

necessary because there were no appropriate placements for the children at this time." Thus, the trial court's findings provide ample support for its determination that the children were dependent juveniles.[4] As a result, although the trial court erred by finding the children to be abused juveniles, it did not err by finding that they were neglected and dependent juveniles.

D. Cessation of Reunification Efforts

Thirdly, Respondent-Mother challenges the portion of the disposition and permanency planning order that authorized DSS to continue to refrain from attempting to reunify the children with Respondent-Parents. More specifically, Respondent-Mother claims that the trial court erroneously failed to make the findings of fact required in order to authorize the cessation of such reunification efforts pursuant to N.C. Gen. Stat. § 7B-507(b). The fundamental problem with Respondent-Mother's argument is the fact that DSS had been relieved of any further responsibility for attempting to reunite the children with Respondent-Parents by means of an order entered on 22 October 2008, in which the

[4]We specifically reject Respondent-Parents' argument that an adjudication of dependency was precluded by their decision to allow Texas CPS to place the children in the care of their Haywood County foster parents. As we have previously noted, "[h]aving an appropriate alternative childcare arrangement means that the parent himself must take some steps to suggest a childcare arrangement-it is not enough that the parent merely goes along with a plan created by DSS." *In re L.H.*, 210 N.C. App. 355, 366, 708 S.E.2d 191, 198 (2011).

court found that such "efforts would clearly be futile or . . . inconsistent with the juveniles' health and safety, and need for a safe, permanent home within a reasonable period of time," and the fact that the Haywood County District Court had not terminated its jurisdiction over this case or subsequently modified the 22 October 2008 order. *See* N.C. Gen. Stat. § 7B-1000(b). As a result, contrary to Respondent-Mother's argument, the trial court was not under any obligation to make the findings of fact required by N.C. Gen. Stat. § 7B-507(b) in either of the orders which are before us in this case.

E. Alleged Agreement Between DSS and Respondent-Parents

Finally, Respondent-Parents contend that the trial court erred by failing to enforce an agreement which they entered into with DSS, by granting judgment on the pleadings against them, or by failing to make the findings necessary to support the entry of the adjudication order as either a consent judgment or as reflective of a stipulation between the parties. According to Respondent-Father, Respondent-Parents "agreed not to contest the adjudication and didn't offer evidence at the hearing, as part of an agreement with DSS that included a chance to work toward reunification with their children."[5] Similarly, Respondent-

[5]Respondent-Father appears to contend, in the heading which accompanied this part of his challenge to the trial court's

Mother asserts that Respondent-Parents "waived their right to an evidentiary hearing on the petition based on an agreement for disposition and permanency planning that the permanent plan would return to reunification" and that, in compliance with that agreement, Respondent-Parents allowed the "DSS narrative contained in Exhibit A to be admitted into evidence without objection and then allowed the court to find that the children were abused, neglected and dependent." Although Respondent-Parents advance a number of legal arguments based upon this alleged non-compliance with their agreement with DSS, we conclude that Respondent-Parents have failed to preserve the right to assert these arguments on appeal by failing to bring their concerns to the trial court's attention prior to the entry of the dispositional and permanency planning order.

N.C.R. App. P. 10(a)(1) states, in pertinent part, that, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely . . . objection, or motion, stating the specific grounds for the ruling the party

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orders, that the failure to honor this agreement between Respondent-Parents and DSS constituted a due process violation. However, Respondent-Father did not advance any constitutional argument in the relevant portion of his brief. As a result, Respondent-Father has abandoned the right to assert any constitutional challenge to the trial court's handling of the alleged agreement between Respondent-Parents and DSS on appeal. N.C.R. App. P. 28(b)(6) (providing that "[i]ssues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned").

desired the court to make . . . [and] obtain a ruling upon the party's request, objection, or motion." Consistently with the basic thrust of N.C.R. App. P. 10(a)(1), this Court has clearly stated that, in the event that "a theory argued on a[n] appeal was not raised before the trial court[,] the argument is deemed waived on appeal." *State v. Davis*, 207 N.C. App. 359, 363, 700 S.E.2d 85, 88 (2010) (citing *State v. Augustine*, 359 N.C. 709, 721, 616 S.E.2d 515, 525 (2005), *cert. denied*, 548 U.S. 925, 126 S. Ct. 2980, 165 L. Ed. 2d 988 (2006)). As the Supreme Court put the same basic proposition in more colorful language almost eighty years ago, "the law does not permit parties to swap horses between courts in order to get a better mount" on appeal. *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E.2d 836, 838 (1934).

In their briefs, Respondent-Parents argue, for the first time in this proceeding, that the adjudication and dispositional and permanency planning orders should be overturned as the result of legal deficiencies in the trial court's orders relating to their agreement with DSS. It is apparent from the record, however, that neither parent ever complained that any agreement that they might have had with DSS had been violated or requested the trial court to take any action on the basis of this alleged agreement despite the fact that they had numerous opportunities to do so. Given that set of circumstances, we

believe, in reliance upon the authority cited in the preceding paragraph, that Respondent-Parents have waived the right to assert their agreement-based claims before this Court.

The hearing held before the trial court on 4 September 2012 was originally intended to address adjudication, dispositional, and permanency planning issues. At the adjudication hearing, the following proceedings occurred:

> [DSS]: What I would offer, Your Honor, is the Department's court report. It has--it is--has a different recommendation as far as a permanent plan in it, which I will amend orally but I would like, at least the facts in it to come into the disposition hearing. And I will read into the record what the parties have agreed to.
>
> THE COURT: Anybody object to DSS 1 at disposition?
>
> [RESPONDENT-MOTHER]: No objection.
>
> THE COURT: DSS 1 is admitted.
>
> [DSS]: And, Your Honor, what the agreement is is that the permanent plan, which is currently guardianship, be changed back to reunification with the respondent parents; that the children remain in the custody of [DSS], the Department having all placement discretion and medical review; that the Department--that the respondent parents are ordered to complete case plans as worked out with the GAL and [DSS].

As a result, the record indicates that Respondent-Parents had agreed to refrain from contesting the adjudication determination in return for an agreement that the permanent plan for the

children would be established as reunification with Respondent-Parents instead of implementation of another guardianship arrangement. However, after counsel for DSS orally recommended that a plan of reunification with Respondent-Parents be established as the permanent plan for the children, the guardian *ad litem* requested that a bench conference be held. At the conclusion of that bench conference, the trial court stated that there was "not a full agreement on disposition," that "all of the parties would like to continue" the hearing, and that "pending disposition, each party shall continue to work their case plans that they've--that you've developed with the Department." As a result, although the trial court entered an order adjudicating the children to be abused, neglected, and dependent juveniles on 24 September 2012, the dispositional and permanency planning hearing was continued until a later date, with the children remaining in DSS custody and the permanent plan remaining one of guardianship, at least on an interim basis, pending the completion of the dispositional and permanency planning proceeding.

On 30 October 2012, a reconvened dispositional and permanency planning hearing was held. At that time, a court report prepared by DSS was introduced into evidence without objection from either parent. According to the contents of this

report and the testimony of Rachel Young, the social worker responsible for this case, DSS recommended that the trial court continue to authorize it to refrain from making reasonable efforts to reunite the children with the parents and adopt a permanent plan of guardianship for the children. This recommendation is also reflected in a modification to the family services agreement between DSS and Respondent-Mother attached to the court report, in which the original recommendation of reunification was deleted and replaced with a recommendation that the permanent plan for the children be one of guardianship. Ms. Young did, however, offer an alternative plan of reunification with Respondent-Parents for the trial court's consideration during the course of her testimony.

Although Respondent-Parents now claim that their agreement with DSS was violated, neither parent ever argued to the trial court prior to, at, or after the dispositional and permanency planning hearing that any sort of agreement-related violation had occurred. Put another way, neither parent ever moved to set aside the adjudication order as having been obtained in violation of their agreement with DSS or objected to the DSS recommendation that guardianship be established as the permanent plan for the children on the grounds that such a result was contrary to the agreement in question. The closest that either

parent ever came to challenging the principal DSS dispositional recommendation at the reconvened disposition and permanency planning hearing before the trial court on agreement-related grounds came during the cross-examination of Ms. Young by counsel for Respondent-Mother, during which the following proceedings occurred:

> [RESPONDENT-MOTHER]: Is it your belief that [Respondent-Parents] were aware that the guardianship of foster parents was an outcome?
>
> [DSS]: Objection.
>
> THE COURT: That is sustained.
>
> [RESPONDENT-MOTHER]: At the last court hearing, was guardianship offered as a possible alternative that was going to happen to [Respondent-Parents]?
>
> [MS. YOUNG]: Can -- can you repeat that just one more time? I'm sorry.
>
> [RESPONDENT-MOTHER]: At the last court hearing, was [Respondent-Mother] told that she needed to work this case plan for reunification?
>
> [ATTORNEY ADVOCATE]: Objection.
>
> [RESPONDENT-MOTHER]: Your Honor, if I may be heard? I think this is a valid question if that was what was presented to [Respondent-Mother].
>
> THE COURT: Well you can ask her if she told her that. She's not responsible for what other people said so.
>
> [RESPONDENT-MOTHER]: I understand.

After having been allowed to question Ms. Young concerning the extent, if any, to which she had told Respondent-Mother that she needed to work on her case plan in order to be reunited with the children, counsel for Respondent-Mother did not take advantage of this opportunity and moved on to other subjects. Even if the inquiry in question had been reiterated, such renewed questioning would not have constituted any sort of assertion that the trial court had to formally consider the implications of that agreement in any way or that DSS was precluded from recommending the adoption of guardianship as the permanent plan for the children at the dispositional and permanency planning proceeding. As a result, Respondent-Parents simply never argued at any point during the proceedings held in the trial court that either the adjudication or the disposition and permanency planning orders were tainted in any way by a violation of their agreement with DSS.

"One of the purposes of requiring parties to object and make motions before the trial court is so that the trial court has the opportunity to correct any errors." *State v. Dye*, 207 N.C. App. 473, 481, 700 S.E.2d 135, 140 (2010). Had either of the parents raised any issue regarding the alleged violation of their agreement with DSS, the trial court could easily have ascertained the nature of the agreement that the parents had

reached with DSS and taken appropriate action to address any issues arising from the existence of that agreement. Having failed to raise any issue concerning their agreement with DSS before the trial court despite having had ample opportunity to do so arising from the multi-stage nature of the trial court proceedings and then seeking to have the trial court's orders overturned on appeal on agreement-related grounds,[6] we believe that Respondent-Parents should be deemed to have waived their right to raise any claim in reliance upon any agreement-related consideration before this Court. As a result, we hold that, given their failure to raise any agreement-related issue before the trial court, Respondent-Parents have waived the right to assert any such issue before this Court on appeal.

III. Conclusion

[6]Although we acknowledge that, ordinarily, a litigant need not object to the trial court's failure to make specific findings of fact prior to the entry of the challenged order as a prerequisite for challenging the trial court's findings on appeal, we do not believe that this principle has any application in a case of this nature. In most instances, the trial court is on notice that specific issues need to be addressed in its findings and conclusions as a result of the relevant legal requirements or the evidence contained in the record. In this case, however, the trial court had no basis for believing that any agreement-related issue needed to be addressed in its order because Respondent-Parents never alerted the trial court that any agreement-related issue existed. As a result, we do not believe that there is any unfairness involved in holding that Respondent-Parents have waived the right to raise any agreement-related issue before this Court.

Thus, for the reasons set forth above, we conclude that, with the exception of their challenge to the sufficiency of the trial court's findings to support its determination that Allison, Elsie, and Lucas were abused juveniles, none of Respondent-Parents' challenges to the trial court's orders have merit. As a result, the trial court's determination that Allison, Elsie, and Lucas are abused juveniles should be, and hereby is, reversed and the remaining provisions of the trial court's orders should be, and hereby are, affirmed.

AFFIRMED IN PART; REVERSED IN PART.

Judge STEPHENS concurs.

Judge Geer concurs in the result only.

Report per Rule 30(e).