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NO. COA14-598
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

IN THE MATTER OF:

	Durham County
J.W.	Nos. 13 J 173
Z.W.	13 J 174
J.F.	13 J 175
Minor Children.	

Appeal by respondent from order entered 5 February 2014 by Judge Nancy Gordon in Durham County District Court. Heard in the Court of Appeals 10 November 2014.

Durham County Attorney Lowell L. Siler, by Assistant County Attorney Bettyna Belly Abney, for petitioner-appellee.

Mary McCullers Reece for respondent-appellant.

Administrative Office of the Courts, by Appellate Counsel Tawanda N. Foster, for guardian ad litem-appellee.

GEER, Judge.

Respondent mother appeals from the trial court's order adjudicating her children J.W. ("John"), Z.W. ("Zephyr"), and J.F. ("James") neglected and placing them in foster care.¹

¹For ease of reading and to protect the privacy of the minor children, we use the pseudonyms "John", "Zephyr", and "James" throughout this opinion.

Respondent primarily argues that the trial court erred in adjudicating her daughter Zephyr neglected. We hold that the trial court's findings of fact that Zephyr lived in an environment injurious to her welfare -- in that (1) she lived in an overcrowded home where there existed domestic violence between respondent and the maternal grandmother, (2) respondent engaged in inappropriate discipline of her children, and (3) respondent neglected Zephyr's siblings by failing to ensure that John attended school regularly and failing to take James to his regularly scheduled medical appointments -- were supported by competent evidence and sufficient to support the trial court's conclusion that Zephyr was a neglected juvenile.

Respondent additionally argues that the trial court erred in its disposition by finding that there was no relative placement option for the juveniles when respondent's aunt was willing and available to care for them. However, DSS considered respondent's aunt as a possible placement for the juveniles but did not approve the placement after conducting a home study. Accordingly, the trial court did not err in concluding that no relative placement was available. We affirm.

Facts

Respondent was 12 years old at the time her first son John was born on 13 August 2004. Zephyr was born on 23 April 2012,

and James was born on 15 July 2013. Paternity of John's putative father has not been established, and the identities of Zephyr's and John's fathers are unknown. None of the children's fathers is involved in their lives.

In 2013, respondent lived with her children and boyfriend in an apartment she obtained with the help of Covenant Community Partners and Alliance Behavioral. She supported herself through Social Security Disability Insurance benefits and a housing assistance program. Respondent had mental health issues and was diagnosed with bipolar 2 and major depressive disorder. Respondent had a difficult relationship with the children's maternal grandmother who was intrusive and controlling of respondent.

In July 2013, James was born prematurely and was diagnosed with a medical condition called hypoxic ischemic encephalopathy ("HIE"). HIE results from deprivation of oxygen at birth and may cause ongoing seizures or developmental delays. When respondent was discharged from the hospital following James' birth, she was informed that James would need developmental follow-ups with the Special Infant Child Clinic ("SICC"). However, respondent failed to take James to the regularly scheduled medical appointments.

In August 2013, respondent's landlord refused to renew her lease due to property damage, so she and her children moved in with her mother at 201 Bell Street in Durham, North Carolina. Living at the Bell Street residence were respondent, respondent's children, respondent's mother, respondent's sister, a family friend and her child, and eight other individuals. Respondent's mother did not have a lease for the premises and did not pay any rent, but charged respondent \$250.00 a month to stay there.

On 18 October 2013, the Durham County Department of Social Services ("DSS") filed a petition alleging the juveniles were neglected. At the time the petition was filed, John was nine years old, Zephyr was 18 months old, and James was three months old. DSS alleged respondent had mental health and cognitive issues that interfered with her ability to provide proper care for the juveniles and she had failed to obtain treatment for those issues; that respondent failed to provide proper medical care for all of the juveniles; that respondent had allowed C.F., one of the putative fathers, to improperly discipline the juveniles; that respondent had placed the juveniles with family members without providing proper instructions or supplies and without telling the caretakers when she would return; and that

respondent had failed to provide stable housing for the juveniles.

The trial court placed John and James in the temporary legal custody of their maternal grandmother, Teresa Williams, and placed Zephyr in the temporary legal custody of their maternal aunt, Tia Allen. Within a week of legal placement, on 25 October 2013, Ms. Williams and Ms. Allen advised DSS that the water at the Bell Street residence had been cut off and the electricity would be disconnected soon. They also reported that the house was heated with only one space heater, and the majority of the house was cold. On 4 November 2013, the trial court entered an order placing the children in the nonsecure custody of DSS and removing them from the Bell Street residence.

On 18 December 2013, the trial court denied motions to intervene filed by the juveniles' maternal aunt and maternal grandmother. The matter came on for an adjudication and disposition hearing on 19 and 20 December 2013. The trial court concluded that the juveniles were neglected and that it was in their best interests to be placed in DSS custody. The trial court also ordered respondent to participate in mental health services, complete a parenting class, and obtain and maintain stable housing and income for herself and the juveniles. Respondent timely appealed to this Court.

Discussion

Respondent first contends that the trial court erred in concluding that Zephyr was neglected. "'A proper review of a trial court's finding of neglect entails a determination of (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 A.S.*, 190 N.C. App. 679, 689, 661 S.E.2d 313, 320 (2008) (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361 (2009). "In a non-jury neglect adjudication, the trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

In an abuse, neglect, and dependency proceeding, the trial court first determines whether the juvenile met the definition of a neglected juvenile under N.C. Gen. Stat. § 7B-101(15) (2013) at the time the petition was filed. 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 been subjected to abuse or neglect by an adult who regularly lives in the home.

Id. Furthermore, "[i]n order to adjudicate a child to be neglected, the failure to provide proper care, supervision, or discipline must result in some type of physical, mental, or emotional impairment or a substantial risk of such impairment." *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007). "Where there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding." *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

In this case, the trial court's findings of fact established the following. At the time the juvenile petition was filed, respondent and her children lived at the Bell Street residence with their maternal grandmother, respondent's sister, a family friend and her child, and eight other individuals. At the time of the hearing, the residence did not have running water or electricity. The maternal grandmother did not have a lease for the premises and has not paid any rent to live there, but charged respondent \$250.00 to live there. A list of police

calls to the Bell Street residence showed that there were frequent police interventions for reports including domestic violence and other disturbances. Respondent admitted to domestic violence between her and the maternal grandmother and that the maternal grandmother had recently hit respondent with a bat. Respondent admitted to using inappropriate discipline on her children, including pinning John to the wall and spanking Zephyr. Respondent failed to ensure that John regularly attended school and was referred to the truancy court. Respondent did not maintain Medicaid for her children resulting in disruptions in her ability to access medical treatment for them, and she failed to take James to several medical appointments.

In sum, the trial court found that:

The following conditions in the home of the mother led to or contributed to the adjudication: chaos, inappropriate discipline, domestic violence and overcrowding in the home rendering the environment injurious to the children; educational neglect in not getting [John] to school regularly; medical neglect in not keeping regularly scheduled medical appointments for [James].

Respondent first argues that there is no evidence to support a finding that respondent spanked Zephyr. Shrounda Douglas Riddick, DSS's child protective service investigator assessor, testified that she interviewed respondent at her home

prior to the DSS petition being filed. Ms. Douglas Riddick testified that during that interview,

[respondent] also talked about her parenting. It was talked about her taking her frustration out on her children. There was an episode where she stated that she had handled [Zephyr] out of frustration, slammed (unintelligible) lap (unintelligible) that episode where she pinned [John] to the wall in one of her frustration episodes.

Respondent told Ms. Douglas Riddick that "that's how she takes frustration out." Ms. Douglas Riddick also testified that she was concerned with "how [respondent] handled [Zephyr] in my office [on a 10 October 2013 office visit] . . . when she picked [Zephyr] and placed [her] on her lap roughly to get her to settle down for a bit." While we agree with respondent that this evidence does not support a finding that respondent spanked Zephyr, it does support the trial court's finding that respondent used inappropriate discipline procedures on Zephyr.

Respondent next argues that there was no evidence that Zephyr was substantially at risk of physical, mental, or emotional impairment. She argues that "[u]nlike James, Zephyr was not medi[c]ally fragile, and did not have a diagnosis that required frequent evaluations to assess her development. Unlike John, Zephyr was not of school age, and was not at risk for missing school." This contention overlooks the portion of N.C. Gen. Stat. § 7B-101(15) that provides that "[i]n determining

whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where . . . another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." Respondent does not challenge the neglect adjudication as to John and James. Thus, in determining whether Zephyr was neglected, the trial court could properly consider the neglect adjudication as to John and James as increasing the risk to Zephyr of physical, mental, or emotional impairment.

Respondent next correctly asserts that the trial court's findings pertaining to post-petition events and circumstances could only be considered by the trial court in support of the disposition and not the adjudication. In an initial adjudication proceeding, in contrast to the dispositional stage, the trial court "is limited to a determination of the items alleged in the petition." *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 14 (2006) (holding trial court did not err in concluding "that the relevant time period for adjudication was from the birth of the child to the filing of the petition"). Here, although some of the trial court's findings refer to events that occurred after the petition was filed on 18 October 2013, such findings were not necessary to support the trial court's adjudication of neglect.

For instance, although the utilities at the Bell Street residence were not cut off until after 18 October 2013, there is ample evidence that the Bell Street residence was injurious to the welfare of the children prior to the filing of the petition. Ms. Douglas Riddick testified that DSS received a report alleging neglect on 26 September 2013 and responded by visiting respondent's Bell Street residence. During the visit, respondent told Ms. Douglas Riddick that she did not have another place to live, and Ms. Douglas Riddick observed that many other individuals lived in the residence. Other family members informed DSS there was no valid lease for the residence and that they were in danger of losing their utilities, including sewer, water, and electricity. Furthermore, Ms. Douglas Riddick testified there was an incident of domestic violence between respondent and the juveniles' grandmother on 9 October 2013, after which respondent left the children with the maternal grandmother, and respondent's whereabouts were unknown for three days.

In sum, the trial court's findings that Zephyr lived in an environment that was injurious to her welfare in that it was overcrowded, chaotic, at risk of having its utilities cut off, and where there were incidents of domestic abuse between respondent and the maternal grandmother, combined with findings

that respondent neglected Zephyr's brothers and used inappropriate discipline procedures on her children, are sufficient to show that Zephyr was at a substantial risk of physical, mental, or emotional impairment. Accordingly, we affirm the adjudication of neglect as to Zephyr.

Respondent's remaining argument is that the trial court, at disposition, erroneously found that no relative could provide proper care and supervision in a safe home. Respondent contends that the juveniles' maternal aunt, P.S., was in a position to do so. We do not agree.

The Juvenile Code provides:

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. *If the court finds that the relative is willing and able to provide proper care and supervision in a safe home,* then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile.

N.C. Gen. Stat. § 7B-903(a)(2)(c) (2013) (emphasis added).

In this case, the trial court's finding that there was no relative who could provide proper care and supervision for the juveniles is supported by the record evidence. DSS considered the aunt, P.S., as a relative placement and conducted a home study on 11 November 2013. DSS concluded that P.S. was not an

appropriate placement, and DSS did not approve placement in her home. The social worker noted that P.S. had been untruthful with DSS, had exhibited an unwillingness to limit the juveniles' contact with respondent and the juveniles' maternal grandmother, and was not familiar with the medical needs of the juveniles. Because this finding was supported by competent evidence in the record, it is binding on appeal.

Affirmed.

Judges STEPHENS and McCULLOUGH concur.

Report per Rule 30(e).