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NO. COA14-699  
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

IN THE MATTER OF:

	Wake County
Y.M.C.	Nos. 13 JA 660
F.C.C.	13 JA 661
S.C.C.	13 JA 662

Appeal by respondent from order entered 27 March 2014 by Judge Eric C. Chasse in Wake County District Court. Heard in the Court of Appeals 10 November 2014.

*Office of the Wake County Attorney, by Roger A. Askew, for petitioner-appellee.*

*Ryan McKaig for respondent-appellant.*

*No brief for guardian ad litem.*

GEER, Judge.

Respondent, the mother of the juveniles Y.M.C. ("Yves"), F.C.C. ("Frank"), and S.C.C. ("Stacy"), appeals from an order adjudicating the juveniles as neglected.<sup>1</sup> On appeal, respondent

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<sup>1</sup>"Yves," "Frank," and "Stacy" are pseudonyms used for ease of reading and to protect the privacy of the juveniles pursuant to N.C.R. App. P. 3.1(b). A pseudonym is also used for Frank and Stacy's father ("Jack"). Neither Jack nor the biological father of Yves are parties to this appeal.

contends that the trial court erred in concluding that the children were neglected because the evidence did not support the court's findings of domestic violence, inappropriate discipline, or the children living in an injurious environment. We disagree. It was the trial court's duty to weigh the credibility of respondent's earlier statements admitting the existence of domestic violence and inappropriate discipline. Because those statements, along with other evidence, support the findings that in turn support the conclusion that the juveniles were neglected, we affirm.

#### Facts

Respondent and Jack, a husband and wife from Cuba, moved with their family to North Carolina as political refugees. There are three children in the family: Yves, the oldest; Frank, the middle child; and Stacy, the youngest. While Jack is the biological father of Frank and Stacy, Yves' biological father remains in Cuba.

On 23 September 2013, respondent dialed 911 and reported that Jack had physically assaulted Frank. Respondent and the children received the assistance of Wake County Human Services ("WCHS") and went to stay at Interact, a shelter for victims of domestic violence. Jack was arrested for assault, but was released shortly thereafter.

On 8 October 2013, respondent requested an ex parte domestic violence order of protection ("DVPO") claiming that Jack had caused injury to Frank, that "the children are in constant fear of [Jack]," and that "the child [sic] was assaulted by [Jack]." On 15 October 2013, Judge Jennifer M. Green entered a DVPO against Jack that was to expire on 15 October 2014.

In addition to finding that Jack physically injured one of the children, the DVPO found that Jack had previously assaulted respondent when they were living in Cuba. The DVPO ordered Jack to stay away from the children's schools, to not come within 100 yards of respondent, and to not interfere with or "follow, harass [respondent or the juveniles] (by telephone . . . or other means)." Further, in awarding temporary custody to respondent, the trial court found that two of the children "are afraid of Defendant" and that "[t]here are marks on the oldest 2 children which appear to precede 9/23/13."

On 29 October 2013, respondent filed a motion to set aside the DVPO on the basis that "reality does not fit the facts, the father . . . poses no danger to the family, [and] . . . children currently miss him very much . . . ." On 5 November 2013, a Child Medical Evaluation ("CME") was conducted on the children. Subsequently, when WCHS learned that respondent would seek to

set aside the DVPO, it filed a verified juvenile petition in Wake County District Court on 26 November 2013 alleging that the children were abused and neglected. That same day, pursuant to motions filed by WCHS, Judge Monica Bousman in Wake County District Court entered orders granting WCHS nonsecure custody of the children. On 2 December 2013, Judge Green denied respondent's motion to set aside the DVPO. On 20 December 2013, Judge Margaret P. Eagles entered an order suspending Jack's visitation and allowing respondent supervised visitation. The children were subsequently placed in foster care.

On 5 March 2014, Judge Eric C. Chasse held a hearing to adjudicate WCHS' allegations of abuse and neglect. At the hearing, Officer John Martinez, a police officer with the City of Raleigh who responded to respondent's 911 call, testified. Sara Kirk, a child maltreatment evaluation specialist who performed the CME, also testified, as well as two social workers with WCHS. Additionally, respondent and Jack testified that on 23 September 2013, Jack either grabbed Frank or slapped him on the arm to direct Frank to "head on upstairs . . . [to] take [his] bath." A certified copy of the court file pertaining to the DVPO was offered into evidence.

On 27 March 2014, the trial court entered an order concluding that the children were neglected because "the

children do not receive proper care and supervision from their parents and live in an environment injurious to their welfare." The order dismissed the petition's allegations of abuse. The trial court made the following pertinent findings of facts:

6. That the family were residing in Raleigh, NC when the mother called 911 emergency services to report that [Jack] was striking the child.

7. Upon the police arriving the mother reported that she was sleeping and woke up to the noise and came downstairs and saw [Jack] who had grabbed [Frank] and was throwing him around. She reported this was not the first time this had happened and that she had told her husband to stop and if he continued she would end up killing him and that she had to protect her children.

8. [Jack] has routinely used excessive and inappropriate discipline for [Frank] and [Yves] including striking the children with an open hand and with a belt.

9. That the children have been exposed to domestic violence in the family home.

10. The mother believed she needed to protect the children from further harm and sought housing through Interact, a program for victims of domestic violence, and did not return to her home. She and the children moved to housing provided for victims of domestic violence.

11. The mother filed a domestic violence protective order on or about October 8, 2013, and by order entered October 15, 2013 the request was granted and made effective until October 15, 2014. On or about October 27, 2013 the mother

attempted to set aside the domestic violence protective order but her motion was denied in a hearing on December 2, 2013, and the order remains in effect and is not scheduled to expire until October 15th, 2014.

12. The children did not receive proper care from their parents and were subjected to an environment injurious to their welfare.

The trial court ordered that the children remain in the custody of WCHS and that WCHS "continue to make reasonable efforts to eliminate the need for placement of the children outside the home." The order conditioned respondent's visitation on compliance with an Out of Home Services Agreement, which included a visitation agreement. The order maintained the suspension of Jack's visitation -- other than limited supervised visitation -- unless he entered into an Out of Home Services Agreement. Respondent mother timely appealed to this Court.

#### Discussion

Respondent's sole argument is that the trial court erred when it adjudicated the juveniles as 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).

"Neglected juvenile" is defined in N.C. Gen. Stat. § 7B-101(15) (2013) 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.

Section 7B-101(15) allows "the trial court some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside." *In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999).

However, to sustain an adjudication of neglect, this Court has held that the alleged conditions must cause some "physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment." *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993). "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).

Respondent does not challenge findings of fact 6, 7, or 11 which are, therefore, "binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). She also does not appear to argue that the conclusions of law are not supported by findings of fact, insofar as the findings are supported by the evidence. However, respondent does argue that findings of fact 8, 9, 10, and 12 are unsupported by clear, cogent, and convincing evidence. Respondent contends that while the evidence demonstrated that Jack disciplined one of the juveniles on one occasion which resulted in respondent calling the police, there was no evidence that Frank suffered any injury "ris[ing] to the level of neglect" or that the juveniles lived in an environment injurious to their welfare.

The evidence shows that on 8 October 2013, respondent filed a complaint and motion for a DVPO. Respondent claimed that Jack hit Frank in the face, and that he had "hit them too hard in the past. Children are fearful." Respondent further claimed that Jack "gets too angry w[ith] the boys. He is very heavy handed w[ith] them [and] will hit them w[ith] belts [and] his hands."



The DVPO complaint and motion further stated that Yves said Jack would "hit him for no reason" and that he had seen Jack "hit mom[.]" Yves told police that, prior to the family coming to the United States from Cuba, he had witnessed Jack hit respondent in the face and push her. Respondent also told police that Jack hit her when they lived in Cuba and, on the night that police investigated Jack's alleged assault on Frank, that she was "fearful of going back inside until the police arrived because she was afraid [Jack] would hit her."

When the trial court granted the DVPO, it found that Frank was physically injured by Jack, there were marks on Frank that appeared to result from events preceding the incident on 23 September 2013, and the juveniles were in fear of Jack. The court also found that Jack had previously assaulted respondent. Although respondent filed a motion to set aside the DVPO, the trial court denied her motion.

In addition to the statements made in the motion for the DVPO and the findings made by the district court in the DVPO, Raleigh Police Officer Martinez testified that he found scars on Frank's back and stomach, as well as fresh marks that respondent said were "all caused by the husband." Officer Martinez also testified that respondent said Jack was "kind of like tossing [Frank] around the room[,]" that she "feared the abuse wouldn't

stop," and that respondent had to run over to a neighbor's house to grab a phone to call 911. The CME concluded that, based on scarring consistent with the use of a belt or similar object, Yves and Frank were the victims of inappropriate discipline. Ms. Kirk testified that in her interview with respondent pertaining to the CME, respondent "distinguished between the different types of offenses the kids would do correlating to the different types of discipline they would use. . . . [I]f the children did something morally wrong, . . . her husband would hit them . . . . But if they did something that was just children's behavior, . . . [Jack] would punish them [such as] making them spend the entire day on the bed."

This evidence and finding of fact 7 support findings of fact 8, 9, and 10. They also support finding of fact 12, including that the children "were subjected to an environment injurious to their welfare." See *In re C.M. & M.H.M.*, 198 N.C. App. 53, 65, 66, 678 S.E.2d 794, 801, 802 (2009) (finding evidence supported that mother did not provide "'proper care, supervision or discipline'" when mother admitted father had "'inappropriately disciplined'" minor, and explaining "the environment in which [the children] lived was injurious in that it involved violence.").

Furthermore, while the trial court did not make a specific finding that the juveniles were impaired by respondent's neglect or that there was a substantial risk of impairment, we conclude that the evidence and other findings support such a finding. The evidence and findings in this case are similar to that in *In re L.T.R. & J.M.R.*, 181 N.C. App. 376, 385, 639 S.E.2d 122, 127 (2007), in which this Court held the evidence and findings supported a finding that the children were "at a minimum, at substantial risk of being impaired because of improper care." In *In re L.T.R. & J.M.R.*, the evidence and findings established that

(a) Respondent Mother's admission to "thumping" her five-year-old daughter in the face hard enough with her finger to leave a bruise shaped like her finger, as part of an ongoing "game"; (b) the bruising of L.T.R.'s upper leg from a severe blow delivered by [L.T.R.'s] stepfather with a brush; (c) Respondents' effort to convince L.T.R. to lie about what happened to cause the bruise on his leg, including promising him a substantial gift in exchange for lying; (d) the fact that J.M.R. told the social worker that the bruise on her face came from falling in the bathtub, the same lie Respondents tried to exact from L.T.R., whereas Respondent Mother admitted that the bruise resulted from her "thumping" J.M.R. in the face; and (e) Respondent Mother's admission that she left L.T.R. alone in the bathtub every night for twenty to thirty minutes after "turn[ing] the water on for him, mak[ing] sure it was the right temperature and let[ting] him have at it."

*Id.* at 384-85, 639 S.E.2d at 127.

Nonetheless, pointing to her motion to set aside the DVPO and her testimony at the hearing, respondent claims that she had been "manipulated into signing a domestic violence protective order" by Interact. Respondent claims that because of her testimony and motion, the other evidence could not support the facts that ultimately support the determination of neglect. It is, however, the trial court's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). Indeed, there was evidence in the record weighing against respondent's credibility, including her admonishing Yves not to disclose anything during the CME interview. Additionally, although respondent denied that Jack was supporting her financially while at the shelter, in violation of the DVPO, Jack admitted this at the hearing.

We, therefore, hold that the trial court's findings of fact are supported by evidence. Those findings in turn support the determination that the children are neglected juveniles. Consequently, we affirm.

Affirmed.

Judges STEPHENS and McCULLOUGH concur.

Report per Rule 30(e).