

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1365

Filed: 21 April 2015

IN THE MATTER OF:

C.B.

New Hanover County

No. 14 JA 76

Appeal by Respondent-father from order entered 24 September 2014 by Judge J.H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals on 6 April 2015.

Jennifer G. Cooke for petitioner-appellee New Hanover County Department of Social Services.

Winston & Strawn LLP, by Eric M.D. Zion and Jason E. Bennett, for guardian ad litem.

Mary McCullers Reece for Respondent-appellant father.

DILLON, Judge.

Respondent-father appeals from the trial court's order adjudicating his minor child "Carol"¹ a neglected juvenile. We affirm.

I. Background

¹ "Carol" is a pseudonym used to protect the identity of the minor child.

IN THE MATTER OF: C.B.

Opinion of the Court

In December 2013, thirteen-year-old Carol was admitted to New Hanover Regional Medical Center (“NHRMC”) due to her parents’ concerns that she was underweight. NHRMC diagnosed Carol with emetophobia, a fear of vomiting, and released her after three days. On 22 January 2014, the New Hanover County Department of Social Services (“DSS”) received a report regarding Carol’s hospitalization that indicated Carol’s parents did not have health insurance. DSS assisted the parents with the process of obtaining insurance.

Carol was readmitted to NHRMC in February 2014. When she was discharged, she had a nasogastric (“NG”) feeding tube which allowed her parents to provide her with nutrition in the event she refused to eat. NHRMC also provided referrals to a nutritionist, a therapist, and Carol’s primary care physician. Carol’s parents had difficulty meeting the financial obligations associated with her recommended treatment because they were still in the process of obtaining health insurance.

On 24 March 2014, Carol was admitted to the UNC Center for Excellence of Eating Disorders (“UNC”). DSS provided a portion of Carol’s co-payment. When she entered UNC, Carol was severely underweight. Her treatment team recommended treating her with Ativan in order to help alleviate her anxiety associated with eating. Carol’s mother initially consented to the treatment, but withdrew her consent shortly thereafter. In addition, Carol’s mother refused to consent both to the placement of

IN THE MATTER OF: C.B.

Opinion of the Court

an NG tube and to daily blood draws, which were necessary to monitor Carol's blood for a potentially fatal complication of her treatment known as Refeeding Syndrome.

On 8 April 2014, Carol's mother notified UNC that she was planning to withdraw Carol from their facility the next day. UNC informed the mother that she would be removing Carol against medical advice and, consequently, they would have to contact DSS. While Carol's mother had made informal contact with a treatment facility in Florida, she did not have an alternative treatment plan ready to implement upon Carol's discharge. UNC contacted DSS, which filed a juvenile petition on 9 April 2014 alleging that Carol was neglected. DSS obtained nonsecure custody of Carol and continued her treatment at UNC.

Carol still struggled to gain weight after she was placed in DSS custody. On 16 May 2014, she reached her goal weight and was discharged to her family. After discharge, Carol was required to continue intensive therapy and have consistent medical checkups.

On 25 August 2014, the trial court conducted a hearing on the neglect petition. The trial court adjudicated Carol a neglected juvenile in open court and proceeded directly to disposition. Based upon her substantial progress, the court returned custody of Carol to her parents and terminated further review hearings. A written

IN THE MATTER OF: C.B.

Opinion of the Court

order memorializing the trial court's rulings was entered on 24 September 2014. Respondent-father timely appealed that order to this Court.²

II. Analysis

Respondent-father's sole argument on appeal is that the trial court erred by concluding that Carol was a neglected juvenile. We disagree.

A neglected juvenile is defined, in relevant part, as “[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile’s parent[;] . . . or who is not provided necessary medical care; . . . or who lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2013). “In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent.” *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984).

“The role of this Court in reviewing a trial court’s adjudication of neglect . . . 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) (marks omitted), *aff’d as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). Respondent-father does not challenge any of the trial court’s findings of fact and so they are binding on appeal. *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007).

² Carol’s mother did not appeal from the trial court’s order and is not a party to this appeal.

IN THE MATTER OF: C.B.

Opinion of the Court

This Court has held that a juvenile is neglected based upon evidence that the juvenile was not provided recommended and necessary medical care. *See, e.g., In re Thompson*, 64 N.C. App. 95, 306 S.E.2d 792 (1983) and *In re Huber*, 57 N.C. App. 453, 291 S.E.2d 916 (1982). For instance, in *In re Thompson*, this Court reversed the trial court's determination that the juvenile was not neglected based upon findings "regarding the pediatrician and social worker's recommendations that [the juvenile] be evaluated to determine if she is developing normally and be treated if necessary, and the respondent mother's failure to seek the recommended treatment for her child" 64 N.C. App. at 101, 306 S.E.2d at 795. Similarly, in *In re Huber*, this Court affirmed a neglect adjudication when the respondent-mother refused to allow her daughter to have speech and hearing treatment and other remedial care. 57 N.C. App. at 458, 291 S.E.2d at 919.

In this case, the trial court's unchallenged findings demonstrate that Carol's parents consistently failed to consent to the recommendations made by Carol's treatment team, and that their failure directly and negatively impacted Carol's ability to receive necessary medical care. Specifically, the court found that the treatment team recommended the use of an NG feeding tube at various times during Carol's hospitalization, but that her parents refused to consent to it; that Carol's mother "vacillated in her agreement to utilize medication and the course of treatment" which "negatively affected the treatment team's ability to treat [Carol];" that her mother refused to consent to daily blood draws "despite the medical necessity

IN THE MATTER OF: C.B.

Opinion of the Court

of the procedure” to ensure that Carol did not suffer from Refeeding Syndrome, which “can be fatal if not monitored and treated immediately[;]” that at the time of the filing of the neglect petition, Carol’s mother had advised UNC that “she was on her way to remove [Carol] from the hospital[;]” and that this threatened removal “would be against medical advice given [Carol’s] dangerously low weight” and that her mother “did not have an alternative treatment plan at that time.” These findings are sufficient to support the trial court’s conclusion that, at the time the petition was filed, Carol was neglected because she was not being provided necessary medical care.

Respondent-father denies that the refusal of he and his wife to consent to certain types of medical treatment constituted neglect. Instead, Respondent-father argues that he and Carol’s mother simply disagreed with UNC’s treatment strategies and that their decisions regarding Carol’s treatment were based upon their concern that UNC was failing to treat the underlying causes of Carol’s weight loss. However, the trial court found that the medical team could not adequately address any of the underlying causes of Carol’s weight problems without first returning her to a healthy weight. Specifically, the court found that “[t]he treatment team was unable to focus on mental health causes because [Carol]’s weight was dangerously low, and the first priority had to be to increase [Carol]’s weight.” Thus, by interfering with the treatment team’s ability to return Carol to a healthy weight, her parents were also delaying any potential treatment for the underlying causes of Carol’s condition.

IN THE MATTER OF: C.B.

Opinion of the Court

Moreover, the fact that the medical decisions by Carol's parents were motivated by their concern for her is immaterial, since it is well established that "when evaluating whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent; the fact that the parent loves or is concerned about [the] child will not necessarily prevent the court from making a determination that the child is neglected." *In re C.P.*, 181 N.C. App. 698, 704, 641 S.E.2d 13, 17 (2007) (marks omitted). While the trial court's findings demonstrate that Carol's parents were attempting to advocate for what they believed were in her best interests, the findings also support the trial court's determination that the parents' actions ultimately interfered with Carol receiving necessary medical care, such that she was a neglected juvenile.

The trial court made sufficient findings of fact to support its conclusion that Carol was a neglected juvenile. The court's order is affirmed.

AFFIRMED.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).