

NO. COA14-812

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

IN THE MATTER OF:

Mecklenburg County
No. 14 JA 84

V.B.

Appeal by Respondent-Appellant Father from order entered 22 May 2014 by Judge Rickye McKoy-Mitchell in District Court, Mecklenburg County. Heard in the Court of Appeals 26 January 2015.

Mecklenburg County Department of Social Services, Youth and Family Services, by Senior Associate County Attorney Kathleen M. Arundell, for Petitioner-Appellee.

Assistant Appellate Defender Annick Lenoir-Peek for Respondent-Appellant Father.

Steven S. Nelson for Guardian ad Litem.

McGEE, Chief Judge.

Respondent-Appellant Father ("Father") appeals from an adjudication and disposition order, which adjudicated his daughter, V.B. ("the Child"), as dependent and placed her in the custody of Petitioner Mecklenburg County Department of Social Services, Youth and Family Services ("YFS"). We reverse the order of the trial court.

I. Background

The Child was born on 8 February 2014. Three days later, on 11 February 2014, before the Child was discharged from the hospital, YFS filed a juvenile petition ("the petition") alleging that the Child was dependent and took the Child into nonsecure custody. The petition alleged that Respondent-Mother ("Mother") was, herself, a minor in the custody of YFS. Mother did not have independent housing, was unemployed, and was living at Florence Crittenton, a residential program for pregnant girls. Father, also a minor, was served with the petition. The petition named Father as the Child's parent but, with respect to Father, the petition alleged only that his paternity had not been established. Father participated in a paternity test on 18 February 2014 and, six days later, on 24 February 2014, DNA testing confirmed that Father was the Child's biological father.

The trial court conducted a hearing on 1 April 2014 ("the hearing"). At the hearing, YFS submitted Father's paternity results and acknowledged that Father's paternity had been established. YFS declined to present any further evidence or witnesses, and purported to rely entirely on the verified petition to support its contention that the Child was dependent. Mother did not object and stipulated to the factual allegations in the petition. Father, however, did not stipulate to those allegations

and contested the petition on the ground that it made no allegations as to his inability to care for the Child. The trial court concluded nonetheless that the Child was a dependent juvenile. The trial court then conducted a dispositional hearing. The trial court entered a corresponding written order on 22 May 2014, in which it adjudicated the Child dependent and ordered that she remain in YFS custody ("the order"). Father appeals.

II. Standard of Review

On appeal from the trial court's disposition order, we must determine (1) whether the trial court's findings of fact were supported by clear and convincing evidence, and (2) whether its conclusions of law were supported by the findings. *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). Unchallenged findings are binding on appeal. *In re C.B.*, 180 N.C. App. 221, 223, 636 S.E.2d 336, 337 (2006), *aff'd per curiam*, 361 N.C. 345, 643 S.E.2d 587 (2007). The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*. *In re N.G.*, 186 N.C. App. 1, 13, 650 S.E.2d 45, 53 (2007), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

III. Analysis

Father challenges the adjudicatory order on the grounds that the order's conclusions of law are unsupported by its findings,

and that its findings are not supported by clear and convincing evidence. We agree.

Adjudicatory hearings for dependency are limited to determining only "the existence or nonexistence of any of the conditions alleged in [the] petition." N.C. Gen. Stat. § 7B-802 (2013). The petitioner has the burden of proving by clear and convincing evidence that a child is dependent. N.C. Gen. Stat. § 7B-805 (2013). In order to do so, pursuant to N.C. Gen. Stat. § 7B-101(9) (2013), in relevant part, the petitioner must prove that "the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." "Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court." *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007). Moreover, although N.C.G.S. § 7B-101(9) uses the singular word "the [] parent" when defining whether "the [] parent" can provide or arrange for adequate care and supervision of a child, our caselaw has held that a child cannot be adjudicated dependent where she has at least "a parent" capable of doing so. See *In re J.A.G.*, 172 N.C. App. 708, 716, 617 S.E.2d 325, 332 (2005) (emphasis added).

Our Juvenile Code mandates that “[t]he adjudicatory order shall be in writing and shall contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-807(b) (2013). “[T]he trial court must, through ‘processes of logical reasoning,’ based on the evidentiary facts before it, ‘find the ultimate facts essential to support [its] conclusions of law.’” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (citation omitted). The findings “must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.” *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (citation and internal quotation marks omitted).

In the present case, the petition named Father as the Child’s father and then alleged that (1) Mother was a minor who was unable to provide for the Child’s care or supervision, (2) paternity had not been established, (3) there were “no known placements currently available for” the Child, and (4) the Child was “dependent” as defined by N.C.G.S. § 7B-101(9). In the adjudication order, the trial court made the following findings of fact:

2. YFS submitted the verified petition . . . as its showing of evidence as it relates to the juvenile and offered the [P]etitioner for cross-examination.

The parties did not object.

The parties did not cross-examine the [P]etitioner.

The [c]ourt receives the verified petition into evidence. The verified petition forms the basis for the [c]ourt's finding of fact.

3. [] [F]ather contested the allegations of the petition and a hearing was held.

. . . .

5. The [c]ourt further finds a factual basis for the submitted verified petition, and further finds that the facts have been proven by clear and convincing evidence.¹

Finding of fact 10 in the adjudication order, in part, found that "[e]verything alleged in the petition still stands today with the exception of paternity being established at this time."²

We conclude that the findings of fact in the adjudication order are insufficient to sustain an adjudication of dependency. Notwithstanding that finding of fact 10 - that paternity had been established - directly contradicts one of the core allegations in the petition, the trial court's findings of fact do not fully address (1) whether either parent was capable of providing care and supervision for the Child; or (2) whether either parent had an

¹ These findings are "check the box" style findings.

² The remainder of finding of fact 10 contains a summary of the arguments presented at the hearing, which do not constitute findings of fact. See *In re O.W.*, 164 N.C. App. 702-03, 596 S.E.2d at 854 (holding that findings of fact were not appropriate where they merely recited what an individual stated).

appropriate alternative child care arrangement for the Child. Thus, the trial court failed to “find the ultimate facts essential to support [its] conclusions of law.” See *In re O.W.*, 164 N.C. App. at 702, 596 S.E.2d at 853.

Father further contends that, even if we were to remand and instruct the trial court to make proper findings as to the unsupported allegations in the petition, the trial court still could not adjudicate the Child as dependent. Specifically, Father argues the Child could not be adjudicated dependent because the trial court found that paternity had been established, and the petition did not allege, and there were no findings made, that he could not provide or arrange for the care and supervision of the Child. Conversely, YFS contends that Father’s paternity should have been “irrelevant” to the trial court’s adjudication of the Child as dependent because, at best, Father’s paternity was established after YFS filed the petition and, therefore, Father was not a “parent” recognized by the North Carolina Juvenile Code at the time of the hearing and was not a “proper party” in the present case.³ We agree with Father.

³ The term “parent” is not defined in the North Carolina Juvenile Code. See N.C. Gen. Stat. § 7B-101 (2013).

YFS is correct to point out that post-petition evidence generally is not admissible during an adjudicatory hearing for abuse, neglect, or dependency. See *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 15 (2006). This is because the purpose of an adjudicatory hearing is to determine only "the existence or nonexistence of any of the conditions alleged in a petition." See N.C.G.S. § 7B-802. However, this rule is not absolute. For instance, in *In re A.S.R.*, 216 N.C. App. 182, 716 S.E.2d 440, slip op. at 11 (2011) (unpublished), this Court allowed a post-petition psychological evaluation to be considered during a neglect adjudication hearing because, "[d]ue to the fact that mental illness is generally not a discrete event or one-time occurrence, . . . the psychological assessment was relevant to respondent's ability to care for her child, regardless of when it occurred."

Similarly, paternity is not a "discrete event or one-time occurrence." It is a fixed and ongoing circumstance, even more so than mental illness. In the present case, Father's paternity was extremely relevant to whether the Child had a parent who could provide or arrange for her care and supervision.

Moreover, YFS submitted Father's paternity results to the trial court and even acknowledged at the hearing that paternity had been established. The trial court made a finding that paternity had been established accordingly. Father does not

challenge this finding on appeal. While YFS does challenge this finding in its brief, YFS did not preserve this issue by objecting during the hearing, nor has it brought a cross-appeal from the trial court's order for us to review. Therefore, the finding that paternity has been established is binding on this Court. See N.C. R. App. P. 3(a) ("Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal[.]"); N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context."); N.C. R. App. P. 28(a) ("Issues not [properly] presented and discussed in a party's brief are deemed abandoned.").

In light of this finding, the trial court erred by adjudicating the Child dependent because YFS made no allegations, and presented no evidence, that Father was unable to provide or arrange for the care and supervision of the Child, and the trial court made no findings to that effect. Because we find that the trial court erred in its adjudication of the Child as dependent, we need not review Father's additional arguments regarding the trial court's dispositional order.

Reversed.

Judges STEELMAN and DAVIS concur.