IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-401

Filed: 15 December 2015

Mecklenburg County, Nos. 14 JA 17, 18, 19

IN THE MATTER OF: L.M., C.M., I.M., J.M., and S.M.

Appeal by respondent-mother from order entered 7 January 2015 by Judge Kimberly Best-Staton in Mecklenburg County District Court. Heard in the Court of Appeals 23 November 2015.

Senior Associate County Attorney Kathleen Arundell Jackson for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Keith Karlsson for guardian ad litem.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant mother.

McCULLOUGH, Judge.

Respondent-mother appeals from a district court order adjudicating "Lily," "Conner," and "Iris"[1] neglected and dependent juveniles, and dismissing the juvenile petition as to "Jack" and "Sam". We affirm in part, reverse in part, and vacate and remand in part.

I. Background

[1] Pseudonyms are used to protect the privacy of the juveniles.

In May 2012, respondent and her five children moved to Charlotte, North Carolina from Wichita, Kansas where the family had received services from its Department of Social Services. The Mecklenburg County Department of Social Services, Youth and Family Services ("YFS") became involved with respondent and her five children after it received a report that they were living in unsanitary conditions. YFS began providing services to the family due to conditions of the home and the conduct of the children. On 9 January 2014, YFS filed a petition alleging eight-year-old Lily, six-year-old Conner, five-year-old Iris, four-year-old Jack, and two-year-old Sam were neglected and dependent juveniles. YFS alleged that Lily is the only child who is potty-trained, that she has been stealing from her teachers and other children, and that she is prescribed three medications, including the anti-psychotic medicine Saphris. The petition further alleged that Conner has been diagnosed autistic, has severe behavioral issues, and has been prescribed six medications. The petition also alleged that Iris wears diapers at home and is also prescribed Saphris. Lastly, the petition alleged that respondent may have cognitive delays that affect her ability to safely care for her children, effectively communicate with school personnel, and properly manage her children's medications.

The trial court appointed a Rule 17 guardian ad litem for respondent based upon a March 2014 Forensic Evaluation of respondent. The adjudication hearing was held on 5 June, 2 July, 26 August, 11 September, 1 and 3 October 2014. By order

filed 7 January 2015, the trial court adjudicated Lily, Conner, and Iris neglected and dependent juveniles, and concluded it was in their best interests to remain in YFS custody. The petition was dismissed as to the two younger siblings. The court ordered respondent to comply with her Family Services Agreement and to have visitation with her children. Respondent appeals.

II. Discussion

On appeal, respondent challenges aspects of both the adjudication and disposition portions of the order.

1. Adjudication

Respondent first contends the facts found by the trial court do not support its adjudications of neglect and dependency. In reviewing a trial court's adjudication, we must determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the conclusions of law are supported by the findings of fact. *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).

A. Neglect

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.

N.C. Gen. Stat. § 7B-101(15) (2013). We have consistently held that an adjudication of neglect requires "that there be 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 Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (internal quotation marks and citations omitted).

In support of its conclusion that Lily, Connor, and Iris are neglected juveniles, the trial court made the following findings of fact:

> 28. The girls had a large number of absences and tardies. [Iris] had 8 absences and 13 tardies before Christmas. [Lily] had 5 absences and 13 tardies. Only one of the absences was excused.
>
> 29. The tardies were disruptive to the girls' educational progress. The school saved their breakfast, and the girls ate the breakfast and missed what was occurring in their classes while they ate the breakfast.
>
> 30. [Lily] was making D's and F's in all her subjects. She was refusing to do her homework. She would take things [from] the classroom that did not belong to her and not return them. The mother addressed the stealing with [Lily] but the behavior did continue.

. . . .

32. [Iris] often came to school wearing a pull-up. Sometimes the pull-up would be wet. [Iris] was in a Pre-K class and was the only child in the class who was sent to school wearing a pull-up.

. . . .

34. The Pre-K teachers would take off the pull-ups and put underwear on [Iris]. [Iris] never had accidents at school, so Ms. Bell did not understand why she was sent to school in a pull-up.

35. [Iris's] pre-K program required her to read 100 books during the school year. The expectation was that a parent would help the child read the books. [Iris] was behind in her reading.

36. Ms. Bell often sent notes or instructions home with [Iris], but they were never signed and returned by [respondent-mother].

. . . .

42. [Respondent] sought Psychiatric help for her older children. [Conner] had been diagnosed at various times as being Autistic, Bi-Polar, Hyper sexualized, and suffering from Encopresis.

43. [Iris] was prescribed and taking Sapphris [sic], an anti-psychotic medication, at age 4.

44. [Lily] was prescribed and taking Clonidine and Sapphris [sic]. . . .

. . . .

49. The mother complained about the services her older children were receiving from Monarch and other providers.

> The mother was unable to coordinate and manage those services, so the services were overlapping and conflicted with each other.
>
> . . . .
>
> 54. The mother has been involved with several providers for the children, but despite those service providers being in place the health and welfare of the children have continued to be compromised.
>
> 55. The mother has parenting issues. When she moved to North Carolina, only [Lily] was potty trained. In January 2014, [Lily] was the only child who was potty trained or not wearing a diaper or pull-up. There was no reason given why the mother continued to send [Iris] to school in a pull-up other than the mother was unwilling or unable to send her to school dressed properly.
>
> 56. In early January 2014, a decision was made to file a petition on the children because YFS and other service providers had been involved for over eighteen months and the same issues that were present in May 2012 were still plaguing the family. Some of these problems were present when the family was living in Kansas before they came to North Carolina.

Of the above findings, respondent challenges finding of fact 28. We note respondent challenges many of the trial court's other findings of fact as not being supported by competent evidence. However, we do not address all of these challenged findings of fact because they are unnecessary to support the ultimate conclusions, and any error in them would not constitute reversible error. *See In re T.M.,* 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("[W]e agree that some of [the challenged findings] are not supported by evidence in the record. When, however, ample other

findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.").

Respondent asserts that the number of absences incurred by Lily and Iris were not a "large number" as the court found in finding of fact 28. The social worker with the Mecklenburg County Schools testified Iris "has [ ] 8 absences and 13 tardies for the year and [Lily] has 5 absences for the year and 11 tardies. But they have not missed or been tardy since Christmas." Regardless of whether or not the absences can be characterized as a "large number[,]" the evidence shows that the absences and tardies significantly affected the girls' education. Lily's teacher testified that Lily received D's and F's when she missed instruction time in the fall; however, by the fourth quarter, Lily made the A-B honor roll. Iris's pre-kindergarten teacher testified that Iris "miss[ed] out" on "a lot of information" due to her attendance issues. Accordingly, we conclude finding of fact 28 is supported by the evidence.

Respondent also asserts the trial court's findings are insufficient to support its conclusion that her children were neglected. We hold that the trial court's findings indicate that Lily, Conner, and Iris were neglected in that they did not receive proper care and supervision and lived in an environment injurious to their welfare at the time the petition was filed. Specifically, respondent's inability to manage her children's services, support her children's educational needs, and potty-train her children are facts sufficient to establish their status as neglected juveniles as defined

under N.C. Gen. Stat. § 7B-101(15). Accordingly, the trial court properly adjudicated Lily, Conner, and Iris as neglected juveniles.

B. Dependency

Respondent next challenges the trial court's conclusion the children were dependent juveniles. The Juvenile Code defines a dependent juvenile, in pertinent part, as "[a] juvenile in need of assistance or placement because . . . 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." N.C. Gen. Stat. § 7B-101(9). "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). Respondent argues the trial court failed to make findings of fact establishing both prongs.

We agree with respondent's argument that the trial court failed to make findings of fact regarding the availability of an alternative child care arrangement. None of the trial court's written adjudicatory findings of fact address this prong. Contrary to the guardian ad litem's ("GAL") assertion, the court's finding that "[n]one of the fathers are involved with their children" is insufficient to demonstrate the lack of an available alternative placement option for the children as of the date of the petition. Without the necessary findings in support of the trial court's conclusion that

the children were dependent juveniles, this conclusion is in error. *See id.* (trial court's order reversed when it "failed to make any findings regarding the availability to the parent of alternative child care arrangements[]"). Because we reverse based on the lack of findings pertaining to the second prong of dependency, we need not address respondent's challenge to the first prong.

2. Disposition

Respondent next contends the trial court improperly delegated its dispositional authority to YFS. "All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). "We review a dispositional order only for abuse of discretion." *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008).

A. Visitation

Respondent contends the trial court improperly left visitation in the discretion of YFS. We disagree.

Visitation in juvenile cases is governed by N.C. Gen. Stat. § 7B-905.1, which provides:

> If the juvenile is placed or continued in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court. The plan shall indicate the minimum frequency and length of visits and whether

> the visits shall be supervised. Unless the court orders otherwise, the director shall have discretion to determine who will supervise visits when supervision is required, to determine the location of visits, and to change the day and time of visits in response to scheduling conflicts, illness of the child or party, or extraordinary circumstances. . . .

N.C. Gen. Stat. § 7B-905.1(b) (2013). Here, the trial court made the following pertinent dispositional finding of fact:

> 7. Visitation shall take place as follows: The mother's visits will remain as is currently taking place. Her visits are to be supervised and take place at Bob Walton Plaza or another approved YFS location. Kathy Johnson can supervise the visits if the team approves.

In a pre-trial hearing order entered on 26 March 2014, the court ordered that visitation shall take place as follows:

> Visits are changed to two times per week, 2 hours per week, Wednesdays and Fridays from 4-6 PM. YFS has the discretion to change the times and dates. If the mother misses three visits, the visits can be scaled back to one visit per week. Maternal relatives may visit so long as it does not decrease the mother's visitation time.

When the two orders are read together, the visitation order sanctions supervised twice-weekly two-hour visits which complies with N.C. Gen. Stat. § 7B-905.1. Further, in accordance with N.C. Gen. Stat. § 7B-905.1, the court was allowed to give YFS authority to use its discretion in managing the visits. The trial court did not improperly leave visitation to the discretion of YFS.

B. Remediation of Conditions

Finally, respondent asserts the trial court abdicated its dispositional authority under N.C. Gen. Stat. § 7B-904 by ordering her to comply with her Family Services Agreement when no Agreement was entered into evidence at the dispositional hearing. Respondent argues that the court "essentially [was] delegating responsibility for formulating a remediation plan to YFS." We agree.

Pursuant to N.C. Gen. Stat. § 7B-904(d1)(3), the trial court may order a parent to "[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent[.]" N.C. Gen. Stat. § 7B-904(d1)(3) (2013).

In its dispositional order, the court found that it "received the following into evidence: The YFS Summaries, a Reasonable Efforts Report, Written Family Services Agreements, the GAL Report" and that the Agreement was incorporated into the order by reference. However, a review of the transcript shows that an Agreement was not entered into evidence at the 3 October 2014 dispositional hearing. Social worker Candyce Davis testified that YFS had made recommendations for the children and respondent in its 5 September 2014 court report, which was received into evidence without objection. The September 2014 court report was not made part of the record and it is unclear whether the recommendations were part of an Agreement. More importantly, the 6 January 2015 YFS court report, which was submitted to the court the day before the dispositional order was signed and filed, shows that a "Child

and Family Team Meeting was held on 10/7/14 and a case plan was developed." Thus, based upon the record before this Court, a signed written agreement or case plan was not received into evidence during the 3 October 2014 dispositional hearing. By not having the Agreement submitted into evidence, the trial court could not order the respondent to comply with the Agreement. The court needed to order a specific plan for reunification and, as a result of not doing so, improperly delegated its duty to order respondent to follow a reunification plan under N.C. Gen. Stat. § 7B-904(d1)(3) to YFS. Accordingly, we vacate that portion of the dispositional order and remand to the trial court for proceedings regarding a remediation plan consistent with this opinion.

III. Conclusion

In sum, we affirm the trial court's order adjudicating the children neglected, reverse the trial court's order adjudicating the children dependent, and vacate and remand the portion of the dispositional order regarding the remediation plan.

AFFIRMED IN PART, REVERSED IN PART, AND VACATED AND REMANDED IN PART.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).