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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-435

Filed: 3 November 2015

Wake County, No. 14 JA 369-72

IN THE MATTER OF: K.W.

Appeal by Respondent-Father from order entered 16 January 2015 by Judge Keith Gregory in Wake County District Court. Heard in the Court of Appeals 5 October 2015.

*Wake County Attorney's Office, by Deputy Wake County Attorney Roger A. Askew, for the Petitioner-Appellee.*

*Appellant Defender Staples S. Hughes, by Assistant Appellate Defender Joyce L. Terres, for the Respondent-Father.*

*Elysia P. Jones for the Guardian ad Litem.*

DILLON, Judge.

Respondent-Father (the "Father") appeals from an order adjudicating his minor child, Kara<sup>1</sup>, and her three older siblings to be neglected juveniles. The court also adjudicated Kara's siblings, but not Kara, to be dependent juveniles. We affirm.

Wake County Human Services ("WCHS") became involved with Kara and her family when it filed a juvenile petition on 7 November 2014, alleging Kara and her

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<sup>1</sup>A pseudonym.

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siblings to be neglected and dependent juveniles. WCHS had received a report alleging that Kara's mother (the "Mother") had driven Kara's siblings home from school while under the influence of an impairing substance. (Kara was not in the car.) The Mother had a history of convictions for driving while impaired, and her license to drive had been revoked. Upon investigating the report, a social worker found the Mother locked in the bathroom of her home. The social worker accompanied Kara's siblings outside while sheriff's deputies broke down the door to the bathroom and discovered the Mother unconscious. Emergency Medical Services personnel took the Mother to the hospital for treatment and it was later determined that she was under the influence of Xanax, Percocet, marijuana, and methadone. The Mother was subsequently involuntarily committed.

The Father was not living with the Mother at the time of the overdose; however, two weeks prior to the Mother's overdose, the Father had left Kara with *his* mother (the "Grandmother") in New Bern.

After obtaining non-secure custody of the children, WCHS continued Kara's placement with the Grandmother, and placed Kara's siblings in foster care.

After a hearing, the trial court entered an order concluding that Kara and her siblings were neglected juveniles. The court also concluded that Kara's siblings, but not Kara, were dependent juveniles. The court continued custody of the children with

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WCHS and directed the Father and the Mother to enter into and comply with out-of-home services agreements with WCHS. The Father appeals.

The Father first argues that the trial court erred in concluding that Kara is a neglected juvenile, pointing out that he had removed Kara from the Mother's home prior to the Mother's overdose. Specifically, the Father contends that Kara was no longer living with the Mother when the overdose occurred and, therefore, the court erred in adjudicating her neglected. We disagree.

"[T]he fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody . . . [is] that the best interest of the child is the polar star." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984). Therefore, "[i]n 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." *Id.* at 109, 316 S.E.2d at 252.

N.C. Gen. Stat. § 7B-101(15) defines "neglected juvenile" to include "[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . 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) (2015). The statute goes on to provide that "[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether the juvenile lives in a home where another juvenile . . . has been subjected to . . .

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neglect by an adult who regularly lives in the home.” *Id.* Thus, while the language in the statute regarding neglect of other children “does not mandate a conclusion of neglect, the trial judge has discretion in determining the weight to be given such evidence.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005) (internal marks omitted).

Furthermore, where the evidence supports a finding of neglect of some of the children in the home, a finding of each child’s physical presence at the same time is not a prerequisite to finding that all the children in the home were neglected. *See In re A.B.*, 179 N.C. App. 605, 611, 635 S.E.2d 11, 15 (2006) (stating that the statute “does not require a finding that the child lives in the home in the most literal meaning of that term, that is physically resides in the home at the time of the filing of the petition”). We have previously observed in such cases that

[s]ince the statutory definition of a neglected child includes living with a person who neglected other children and since this Court has held that the weight to be given that factor is a question for the trial court, [] court[s] . . . [are] permitted, although not required, to conclude [] [a child not physically present at the time of the alleged neglect] [is] neglected.

*In re P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406. “[T]he decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

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We review a trial court's adjudication of neglect "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), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008) (internal marks omitted). "If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary." *Id.* Findings of fact that are not challenged as lacking adequate evidentiary support are deemed to be supported by sufficient evidence and are binding on appeal. *See In re P.M.*, 169 N.C. App. at 424, 610 S.E.2d at 405. However, "[t]he trial court's conclusions of law are reviewable *de novo* on appeal." *In re K.J.D.*, 203 N.C. App. 653, 657, 692 S.E.2d 437, 441 (2010) (emphasis in original).

In the present case, the Father's challenges to the trial court's findings of fact consistently reiterate his position that Kara no longer lived with the Mother at the time the Mother accidentally overdosed, arguing, for example, that findings of fact four and eleven referring to the "children" should be construed to include the Mother's other children but not Kara, or at least, that it is unclear whether the findings refer to Kara as well as her siblings. However, we perceive no ambiguity in the trial court's findings referencing "the children." It is clear that the findings refer to *all* of the Mother's children, including Kara. While the trial court was not required to determine that Kara was neglected based on its adjudication that her siblings were

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neglected, it was permissible for the court do so. *See In re P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406. Therefore, we hold that the references in findings four and eleven to “the children” support rather than undermine the court’s adjudication that Kara was neglected.

Furthermore, we hold that the trial court’s other findings of fact supported the adjudication of neglect. Specifically, the court found that the Father refused to provide his address or cooperate with WCHS in making an alternative arrangement after learning of the Mother’s overdose; that the Father had previously struck Kara with a car accidentally and was uncooperative with hospital staff after the incident; that the Father is unable to provide a suitable home for Kara; that his drivers’ license is revoked and he has been arrested twice since Kara’s birth; that he was aware of the Mother’s substance abuse problems prior to her overdose; that the Mother’s other children fear him based on past physical abuse; and that he continues to refuse to engage with WCHS or even provide WCHS with his address. Although the Father challenges some of these findings, competent evidence to the contrary was presented in support of them to the trier of fact, and we will not disturb the trial court’s determination of the credibility to afford conflicting evidence.

We note that we rejected a remarkably similar argument in *In re K.J.D.* Like the Father in the present case, in *In re K.J.D.*, the respondent argued that because the child was residing with the grandmother rather than the respondent at the time

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the petition was filed, the trial court's conclusion that the child was neglected was unsupported by the court's findings of fact. 203 N.C. App. at 657-68, 692 S.E.2d at 441-42. Rejecting this argument, we reasoned that since the respondent's inability to care for the child continued throughout the time the child lived with the grandmother, the court's findings regarding the respondent's inability to correct the conditions leading to the removal of the child supported the court's conclusion of neglect. *Id.* at 661, 692 S.E.2d at 444.

In the present case, as in *In re K.J.D.*, the mere fact that Kara was not living with the Father at the time the petition was filed did not undermine the trial court's conclusion that Kara was neglected by the Father at that time. *See id.* Rather, "[t]he court's findings of fact show that [the] respondent[] has been and remains unable to adequately provide for [the] child's physical and economic needs." *Id.* Accordingly, this argument is overruled.

Under N.C. Gen. Stat. § 7B-904(d1)(3), a trial court "may [] order a parent to take 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." *In re W.V.*, 204 N.C. App. 290, 297, 693 S.E.2d 383, 388 (2010). The Father contends that the trial court improperly required him to ameliorate conditions unrelated to the adjudication of neglect, citing this Court's decision in *In*

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*re H.H.*, \_\_\_ N.C. App. \_\_\_, 767 S.E.2d 347 (2014), in support of his argument. However, we find the present case distinguishable.

In *In re H.H.*, nothing in the trial court's findings suggested that the respondent's failure to secure stable housing contributed to the removal of the juveniles from the respondent's custody and the failure to secure stable housing was not a basis for the petition seeking removal. *Id.* at \_\_\_, 767 S.E.2d at 353. Unlike in *In re H.H.*, in the present case, the trial court's findings regarding the Father's inability to maintain stable housing contributed significantly to the court's adjudication of neglect. Similarly, the Father's inability to serve as a suitable placement for Kara *was* a basis alleged in the petition seeking removal. Furthermore, the Father testified that he was unable to both work and look after Kara; that he was unable to provide a suitable living situation for Kara; and that financial issues and his inability to provide suitable housing led him to leave the child with the Grandmother. Therefore, we hold that that the trial court did not exceed its authority in ordering the Father to maintain suitable housing and income adequate to support his child's needs.

AFFIRMED.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).