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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1373

Filed: 2 August 2016

Surry County, Nos. 14JA92, 93

IN THE MATTER OF: I.H., T.H.

Appeal by respondent from orders entered 8 September 2015 by Judge Spencer G. Key, Jr. in Surry County District Court. Heard in the Court of Appeals 12 April 2016.

Campbell Law Group, PLLC, by Susan Curtis Campbell, for petitioner-appellee Surry County Department of Social Services.

Mary McCullers Reece, for respondent-appellant mother.

Womble Carlyle Sandridge & Rice, LLP, by Jessica L. Gorczynski, for Guardian ad Litem.

DIETZ, Judge.

Respondent appeals the trial court's adjudication of neglect with respect to her two children. Respondent argues that certain findings by the trial court are based on inadmissible hearsay. Respondent also argues that the trial court improperly relied on her failure to comply with a voluntary case plan in its adjudication of neglect.

As explained below, we reject Respondent's arguments. Even setting aside the evidence that Respondent challenges as inadmissible hearsay, the record supports the trial court's ultimate finding of neglect, rendering any evidentiary error harmless.

In addition, the trial court did not base its neglect findings on Respondent's violation of the voluntary case plan but, rather, on Respondent's failure to make progress on the underlying issues identified in that case plan. Accordingly, we reject Respondent's arguments and affirm the trial court.

Facts and Procedural History

On 9 March 2015, social worker Tamrin Linville met with Respondent, along with her mother and boyfriend, to discuss the outcome of a social services investigation that concluded Respondent's two children, Ike and Tammy, were neglected.¹ Respondent agreed to follow a service plan that would help address her children's needs. At that time, the children were living with Respondent's mother while Respondent lived in a motel. Respondent had a home, but the power had been shut off there and it was unsuitable for living. Respondent also was participating in drug treatment for an opiate addiction.

During Respondent's meeting with Linville, Respondent acknowledged that she had received approximately \$1,600 to help her pay the power bill and get her home ready for habitation but she had not used the money to prepare her home for habitation and, as a result, was still living a transient lifestyle.

Linville recommended that Respondent pursue various social services, including intensive in-home parenting classes, continued participation in drug

¹ We use pseudonyms to protect the children's privacy.

treatment, and counseling for the children through Easter Seals. Respondent failed to keep in contact with DSS or make herself available for the recommended services. On 24 March 2015, DSS filed petitions alleging that the children were neglected.

At the hearing, in addition to the facts described above, Linville testified—over Respondent’s objection—concerning information in Respondent’s case file. Reports from another social worker in that file indicated that Respondent allowed thirteen-year-old Ike to walk, by himself, to the library from the motel where Respondent lived—a distance of over three miles. The case file also contained a report of an incident in which Respondent’s boyfriend hit Ike in the head with a belt. Another report described how Tammy’s hair was “chopped in various areas” after she refused to brush it. The case file also indicated that Respondent made her children stay outside most of the day while at the motel and that the area in which the children were left outside was frequented by drug users, sex offenders, and other potentially dangerous individuals.

The trial court ultimately adjudicated the children neglected and set a current plan of continued placement with the maternal grandmother with a permanent plan of reunification with Respondent. Respondent timely appealed.

Analysis

On appeal, Respondent argues that the trial court’s findings of fact and conclusions of law do not support its adjudication of neglect. “Allegations of neglect

must be proven by clear and convincing evidence. 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) (citation omitted). As explained below, we hold that the trial court's findings are sufficient to support its conclusions of law and therefore affirm the trial court's decision.

I. Findings based on report in DSS file

Respondent first argues that the trial court improperly relied on hearsay testimony in its findings of fact. Specifically, Respondent argues that much of Finding of Fact 3, which describes Respondent's continuing neglect of her children, is based solely on testimony from social worker Tamrin Linville, who in turn relied entirely on information from a DSS case file prepared by other DSS employees.

We need not address this hearsay argument because, even if we ignore the trial court's findings based on that alleged hearsay testimony, there is sufficient evidence in the record to support the trial court's ultimate finding of neglect. *See In re Brenner*, 83 N.C. App. 242, 250, 350 S.E.2d 140, 146 (1986). Respondent lived a transient lifestyle and failed to provide stable housing for her children, even after receiving funds to assist her in turning on the power to her home to create a livable environment for her children. As a result, the children were forced to live with their maternal grandmother for months at a time without any assistance from Respondent.

Respondent also refused to engage in recommended counseling and other social services to address the challenges she faced in caring and providing for her children. This evidence supports the trial court's determination even without the challenged hearsay evidence, thus rendering any error harmless.

II. Failure to follow case plan

Respondent next argues that the trial court erred by adjudicating the juveniles neglected solely based on Respondent's failure to fully comply with her pre-adjudication plan. Respondent argues that failure to comply with her case plan is insufficient to support an adjudication of neglect because there had been no judicial determination that a case plan was necessary. We reject this argument because the trial court did not base its neglect findings on the violation of the case plan but, instead, on the failure to make progress on the underlying issues identified in that case plan:

2. Respondent Mother and her boyfriend, [David B.], entered into case management with DSS on March 9, 2015, *to help the family alleviate issues such as substance abuse[;] lack of safe, stable housing[;] and improper care, supervision, and discipline of the juveniles by Respondent Mother[] and her boyfriend, [David B]. Respondent Mother did not address the issues identified in the In-Home Family Services Case Plan, and did not provide for the basic needs of the juveniles. Respondent Mother failed to provide safe, suitable housing for herself and the juveniles, and Respondent Mother has not maintained contact with the social worker.*

These findings are supported by the record. Accordingly, we reject this argument.

Finally, Respondent argues that the trial court's findings concerning her non-compliance with the case plan do not support its determination of neglect because the children are now living with their grandmother, not with Respondent. We disagree.

The trial court found that Respondent had unstable housing and resided in motels even after she received funds to turn the power on at her home. The court also found that "the juveniles have been residing with the maternal grandmother since October 20, 2014, without any assistance from Respondent." Thus, the trial court based its determination on Respondent's failure to assist in the care of the children for at least five months before she entered into the case management plan with DSS and the continued failure to do so for at least two months after receiving funds to turn the power back on at her home.

In addition, we note that the trial court did not adjudicate the children as dependent, which would have required a finding 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." N.C. Gen. Stat. § 7B-101(9). The adjudication was for neglect, not dependency, based on Respondent's failure to provide "proper care, supervision, or discipline" for her children. *Id.* § 7B-101(15). That neglect finding is permissible regardless of whether the children are now living with their grandmother. Accordingly, we affirm the trial court.

IN RE: I.H., T.H.

Opinion of the Court

Conclusion

For the reasons stated above, we affirm the trial court's orders.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).