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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-175

Filed: 20 September 2016

Catawba County, No. 15 JA 141

IN RE: J.H.

Appeal by respondent from order entered 21 October 2015 by Judge Wesley W. Barkley in Catawba County District Court. Heard in the Court of Appeals 24 August 2016.

Lauren Vaughan for petitioner-appellee Catawba County Department of Social Services.

Mercedes O. Chut for respondent-appellant father.

Keith Karlsson for guardian ad litem.

TYSON, Judge.

Respondent, father of J.H., appeals from an order adjudicating the juvenile neglected and placing the child in the sole custody of the mother. We affirm.

I. Background

On 21 May 2015, the Catawba County Department of Social Services (“DSS”) filed a petition alleging that twenty-two month old J.H. was a neglected juvenile, and that her half-sister, five-year-old A.G., was an abused and neglected juvenile. The juvenile petition erroneously listed J.H.’s sex as male.

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DSS alleged J.H. and A.G. lived in a house in poor condition and which did not meet minimum standards for safety and cleanliness. DSS also alleged, upon information and belief, that Respondent: (1) had sexually abused A.G.; (2) frequently watched pornography, and that A.G. had seen it on his phone; and (3) smoked marijuana in the home where the juveniles resided. DSS further stated respondent had tested positive for marijuana use on 20 April 2015.

On 27 July 2015, DSS filed notice of its intent to use hearsay at the adjudication hearing. DSS sought to offer statements made by A.G. contained in a DVD recording of a forensic interview conducted on 26 March 2015 concerning the sexual abuse allegations. On 24 August 2015, the court entered an order allowing the interview to be admitted pursuant to N.C. Gen. Stat. § 8C-1, Rule 803(24) (2015). Adjudication hearings were held on 21 and 22 September 2015. On 21 October 2015, the trial court adjudicated A.G. as abused and neglected, and J.H. as neglected. Respondent appeals the adjudication concerning J.H.

Respondent is J.H.'s father and was A.G.'s caretaker. Because Respondent was A.G.'s caretaker, he does not fall within any category of persons afforded a statutory right to appeal from a juvenile adjudication pursuant to N.C. Gen. Stat. §§ 7B-1001 and 7B-1002 (2015). Our review of the trial court's adjudication and disposition order is limited to J.H.

II. Issue

Respondent argues the trial court erred when it adjudicated J.H. a neglected juvenile. We disagree.

III. Standard of Review

This Court reviews 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 Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citations omitted). We review the trial court's conclusions of law *de novo* on appeal. *In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006) (citation omitted).

IV. Analysis

A. Neglect

"Neglected juvenile" is defined in N.C. Gen. Stat. § 7B-101(15) 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 In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2015).

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“This Court has consistently required 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); *see also In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

The trial court made the following findings of fact:

5. As of March 24, 2015, the children resided with [their mother and Respondent] in a home that was in poor condition and did not meet minimum standards for safety and cleanliness. The roof was leaking in multiple places. There were dog feces on the floor of the home in multiple places, including the bathroom. There were empty liquor bottles on the kitchen counters and in the sink. There were clothes and trash strewn on the floors throughout the home. The back door to the home was taped up with duck [sic] tape which prevented anyone from exiting the home through that door. There was trash as well as multiple random toilets located outside the home. There was exposed wiring in the home. Portions of the porch of the home were unstable and in disrepair. There were roaches throughout the home, including in the pack and play where the youngest child slept and where the youngest child was in fact located when the social worker visited on March 24, 2015. The Court did receive into evidence Exhibits 1-21, photographs of the conditions of the home on March 24, 2015, and the Court finds the conditions to be as set forth in the Court’s findings above and as depicted in the said exhibits.

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18. [Respondent] smokes marijuana, and drinks alcohol three to four days per week at the home where the children reside, but denies smoking around the children. On April

21, 2015, [Respondent] tested positive for marijuana

Respondent does not object to these findings of fact and they are binding upon appeal.

Koufman v. Koufman, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

B. Impaired due to Neglect

Respondent argues the trial court failed to make any finding to show J.H. was either impaired or at risk of impairment due to the alleged conditions of neglect. However, “[w]here there is no finding that the juvenile has been impaired or is at substantial risk of impairment, there is no error if all the evidence supports such a finding.” *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003).

Here, J.H. was less than two years of age when DSS filed the petition. The trial court’s unchallenged findings of fact 5 included clear, cogent and convincing evidence that Respondent’s home was in “poor condition” and “did not meet minimum standards for safety and cleanliness.” The court found the “pack and play” where J.H. slept was infested with roaches.

The court also found Respondent watched pornography, while A.G. and J.H. were present. In unchallenged findings of fact 18 and 19, the court found Respondent smoked marijuana in the home where this very young child lived. The court noted Respondent “denies smoking around the children” and found he had tested positive for marijuana use. Section 7B-101(15) affords “the trial court some discretion in determining whether children are at risk for a particular kind of harm given their

age and the environment in which they reside.” *In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999). The trial court’s findings reveal “a substantial risk” of impairment to J.H. due to Respondent’s conduct and neglect. *In re Safriet*, 112 N.C. App. at 752, 436 S.E.2d at 901-02.

The trial court’s conclusion that J.H. does not receive proper care, supervision or discipline and resides in an environment injurious to her welfare is supported by clear, cogent, and convincing evidence. *In re Gleisner*, 141 N.C. App. at 480, 539 S.E.2d at 365. Respondent’s argument is overruled.

V. Admission of Forensic Interview

Defendant asserts the trial court erred in admitting A.G.’s out of court forensic interview regarding Respondent’s alleged sexual abuse of her. Presuming the testimony constituted inadmissible hearsay, Respondent failed to challenge other findings of fact, which are binding upon appeal and support the trial court’s conclusion, and cannot show he was prejudicially harmed by the admission. “It is well established that even when the trial court commits error in allowing the admission of hearsay statements, one must show that such error was prejudicial in order to warrant reversal.” *In re F.G.J.*, 200 N.C. App. 681, 687-88, 684 S.E.2d 745, 750 (2009) (citation and quotation marks omitted).

While N.C. Gen. Stat. § 7B-101(15) lists living in a home where another juvenile has been subjected to abuse or neglect as relevant to the determination of

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whether the juvenile is neglected, other unchallenged clear and convincing evidence and findings support a conclusion of neglect. *See In re P.M.*, 169 N.C. App. 423, 610 S.E.2d 403 (2005) (statutory definition of neglect includes living with a person who neglected other children but this language does not mandate a conclusion of neglect on this factor, the weight to be given that factor is a question for the trial court).

Since we conclude the trial court's unchallenged findings of fact related to improper care and supervision and an injurious environment, are sufficient to support its conclusion of neglect of J.H., Respondent has failed to show prejudice to himself from the court's conclusion that A.G. was abused.

Whether the hearsay evidence allowed, and the findings of fact to support the trial court's conclusion that A.G. was an abused juvenile within the meaning of N.C. Gen. Stat. § 7B-101(1), was inadmissible is not properly before us on Respondent's appeal and we do not address that assertion.

VI. Conclusion

We affirm the trial court's conclusion that Respondent failed to provide J.H. with proper care and supervision. The trial court's unchallenged findings of fact support a conclusion that J.H. was at a substantial risk of physical, mental, or emotional impairment, and was living in an environment injurious to her welfare due to respondent's neglect. The trial court's order is affirmed.

AFFIRMED.

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Judge BRYANT and ZACHARY concur.

Report per Rule 30(e).