IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-529

Filed: 15 November 2016

Guilford County, Nos. 15 JA 169–70

IN THE MATTER OF: D.P. and B.P.

Appeal by respondent-mother from order entered 19 February 2016 by Judge Wendy M. Enochs in Guilford County District Court. Heard in the Court of Appeals 24 October 2016.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

Michael E. Casterline for respondent-appellant mother.

ELMORE, Judge.

Respondent-mother appeals from the trial court's order adjudicating her son, "Dane," an abused and neglected juvenile, and adjudicating her daughter, "Brooke," a neglected juvenile.[1] We affirm the order in part, reverse in part, and remand for further proceedings.

I. Background

[1] We use these pseudonyms to protect the identities of the juveniles.

On 1 March 2015, Guilford County Department of Health and Human Services (GCDHHS) received a Child Protective Services (CPS) report alleging that eleven-month-old Dane presented at MedCenter Emergency Department in High Point with a fractured femur. He also had healed fractures to two ribs and a tibia. Dane was transferred to Brenner's Hospital, where staff discovered multiple bone fractures at various stages of healing. During the CPS investigation, respondent-mother and her live-in boyfriend, Willis G., attributed Dane's broken femur to the family dog and suggested that the other fractures occurred prior to November 2014, while Dane was living with respondent-father.

Advised by Dane's treating physician that many of the fractures post-dated November 2014, and lacking a plausible account of Dane's injuries from respondent-mother or Willis G., GCDHHS obtained non-secure custody of Dane and his four-year-old sister, Brooke, on 20 March 2015. DHHS filed juvenile petitions alleging the following: Dane is an abused juvenile in that his parent or caretaker (1) has inflicted or allowed to be inflicted on the juvenile a serious physical injury by other than accidental means, and (2) has created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; Dane is a neglected juvenile in that (1) he does not receive proper care, supervision, or discipline from his parent or caretaker, and (2) he lives in an environment injurious to his welfare; and Brooke is a neglected juvenile in that she lives in an environment injurious to her welfare.

The trial court held a hearing on the petitions on 26 January 2016. In an order entered 19 February 2016, the court adjudicated Dane an abused and neglected juvenile and adjudicated Brooke a neglected juvenile. The court granted legal and physical custody of both children to GCDHHS and scheduled a permanency planning hearing for 23 March 2016. Respondent-mother filed timely notice of appeal from the order.

II. Discussion

A. Adjudication

Respondent-mother challenges Dane's adjudications as abused and neglected on the grounds that they are unsupported by the evidence and the trial court's findings of fact.

We review a trial court's adjudication of abuse, neglect, or dependency "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) (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). "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.*

Respondent-mother argues the trial court's conclusions that Dane is abused and neglected are supported by "no findings or evidence except the child's

unexplained injuries." She contends the court failed to make "specific findings" to resolve the "ultimate facts" at issue in this case, i.e., whether she or Willis G. "inflicted the injuries or allowed the injuries to be inflicted." By finding her and Willis G. "responsible" for Dane's injuries without resolving how they occurred, respondent-mother claims, the court "applied a strict liability standard" and improperly "shift[ed] the burden of proof" to her as the respondent-parent.

The Juvenile Code defines an "abused juvenile" as, *inter alia*, one whose parent or caretaker "[i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means." N.C. Gen. Stat. § 7B-101(1) (2015). "The purpose of abuse, neglect and dependency proceedings is for the court to determine whether the juvenile should be adjudicated as having the status of abused, neglected or dependent." *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007). The issue before the trial court is "the status of the juvenile and not the assignment of culpability." *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 647 (2007); *see also In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984) ("In 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."). Accordingly, we have emphasized that "[t]he purpose of the adjudication and disposition proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent." *In re J.S.*, 182 N.C. App. at 86, 641 S.E.2d at 399. The question on review, therefore, "is whether the court made the

proper determination in making findings and conclusions as to the status of the juvenile." *Id.*

As respondent-mother observes, many of the trial court's purported findings of fact merely recount reports or other statements made to GCDHHS during its investigation and are "not even really . . . finding[s] of fact." *In re O.W.*, 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004). Nonetheless, the order contains sufficient affirmative findings to support the court's conclusion that Dane is abused, to wit:

> 14. On March 1, 2015, [GCDHHS] received a [CPS] report alleging that [Dane] . . . presented at MedCenter Emergency Department in High Point with a fracture to the femur. The juvenile also had healed fractures to two ribs and a tibia. [Respondent-mother] reported that on February 28, 2015, Willis [G.], her boyfriend, was in the process of running bath water and left the juvenile in the bedroom with the family's pet pit-bull. The boyfriend observed the pit-bull leaving the room with his head down and the boyfriend picked up the juvenile up [sic] and gave him a bath. [Respondent-mother] reported that the baby was fussy and woke up during the night. She gave him a pacifier and he fell back to sleep. On March 1, 2015, [she] noticed that [Dane] was not able to stand up and the family transported him to Moses Cone Emergency Department.
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> 15. . . . After being diagnosed with a femur fracture at MedCenter High Point, [Dane] was admitted to Brenner's Hospital in Winston-Salem.
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> . . . .
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> 18. . . . [Dane] weighed 17 lbs upon admission [to Brenner's Hospital], which indicated that he was in the third percentile for growth. He had lost 3 lbs since September 2014.

. . . .

21. On March 3, 2015, . . . [b]oth the mother and [Willis G.] continued to state that the family dog caused the injuries, and that they were the only adults present in the home at the time of the incident.

. . . .

25. On March 16, 2015, [Dane] was examined at Brenner's Hospital. He weighed 20.11 lbs. He had no new fractures.

. . . .

28. . . . [Dane] presented [at Brenner's Hospital] with the following injuries: the femur was broken in two places, a broken clavicle and a broken posterior Rib #9. He had 11 broken anterior ribs, which were in different stages of healing. . . . Dr. [Stacey] Briggs also found a healing fracture of the tibia and a healing fracture to the corner of the fibula. . . . Brenner staff checked [Dane's] vitamin D level, calcium levels and his bone mineralization. All appeared normal.

. . . .

31. On March 19, 2015, [GCDHHS] made a decision to file a petition . . . because [Dane] was an eleven-month-old infant with multiple fractures in different stages of healing, caused by non-accidental trauma. The mother and her boyfriend had been the caretakers and the explanation of the injuries was not plausible.

. . . .

32. . . . Based on the mother's testimony, she and Willis [G.] were the only care providers for [Dane], and are therefore responsible for his injuries.

. . . .

> 56. The Court explained to the mother that since she and [Willis G.] were the only two people who supervised and were in charge of the juvenile who suffered all these multiple injuries, on multiple days, either she or [he] inflicted the injuries. . . . Those are the only two explanations. Everything medically has been ruled out.[2]

The foregoing demonstrates that Dane sustained multiple bone fractures on several occasions through "non-accidental trauma"—most recently to his femur—and that one of the child's two caretakers, respondent-mother or Willis G., inflicted the injuries. While the trial court did not specify which theory of abuse it relied upon for its conclusion, its unchallenged findings satisfy both theories alleged by GCDHHS and are sufficient to support its conclusion that Dane is an abused juvenile. *See In re Y.Y.E.T.*, 205 N.C. App. 120, 128–29, 695 S.E.2d 517, 522–23 (2010); *see also In re S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 712 (2011) ("The findings need to be stated with sufficient specificity in order to allow meaningful appellate review." (citation omitted)); *In re Safriet*, 112 N.C. App. 747, 753, 436 S.E.2d 898, 902 (1993) ("Although the trial court failed to make any findings of fact concerning the detrimental effect of [the mother's] improper care on [the juvenile's] physical, mental, or emotional well-being, all the evidence supports such a finding.").

The court's findings are also sufficient to establish Dane's status as a neglected juvenile. A "neglected juvenile" is defined, in relevant part, as one "who does not

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[2] Although Finding of Fact No. 56 is located in the dispositional portion of the order, it is made under the "clear, cogent and convincing evidence" standard required for adjudicatory findings and is based on evidence presented during the adjudicatory phase of the hearing.

receive proper care, supervision, or discipline from the juvenile's parent . . . or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2015). To adjudicate a juvenile neglected, "the failure to provide proper care, supervision, or discipline must result in some type of physical, mental, or emotional impairment or a substantial risk of such impairment." *In re C.M.*, 183 N.C. App. 207, 210, 644 S.E.2d 588, 592 (2007) (citing *In re Safriet*, 112 N.C. App. at 752, 436 S.E.2d at 901–02). In addition to Dane's recently-fractured femur, his prior fractures and broken bones—found at different stages of healing—and his low weight reflect physical impairments caused by the failure of respondent-mother or Willis G. to exercise a normative standard of care. Again, although the trial court did not specify which definition of neglect it relied upon, its findings satisfy both theories of neglect alleged by GCDHHS and are sufficient to support its conclusion and adjudication.

Respondent-mother also contests the adjudication of Brooke as neglected, arguing that the trial court's findings of fact "failed to show that she lived in an injurious environment." Respondent-mother concedes the court was allowed to consider Dane's injuries in assessing Brooke's status under N.C. Gen. Stat. § 7B-101(15), but insists that Dane's adjudication as abused and neglected "is insufficient to support the conclusion that Brooke was neglected without additional findings of fact."

The Juvenile Code provides that "[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . 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). "[T]his language regarding abuse or neglect of other children 'does not mandate' a conclusion of neglect" but provides the trial court with " 'discretion in determining the weight to be given [to] such evidence.' " *In re A.S.*, 190 N.C. App. 679, 690, 661 S.E.2d 313, 320 (2008) (quoting *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994)). Put differently, the fact that a sibling has been subject to abuse or neglect in the home does not eliminate the requirement that the juvenile in question experience "some type of physical, mental, or emotional impairment *or a substantial risk of such impairment*" in order to be adjudicated neglected. *In re C.M.*, 183 N.C. App. at 210, 644 S.E.2d at 592 (emphasis added). The court must "consider the substantial risk of impairment to the remaining children when one child in a home has been subjected to abuse or neglect." *In re McLean*, 135 N.C. App. 387, 394, 521 S.E.2d 121, 126 (1999). Moreover, "the trial court [has] 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." *Id.* at 395, 521 S.E.2d at 126 (citing *In re Nicholson*, 114 N.C. App. at 94, 440 S.E.2d at 854).

As quoted above, the majority of the trial court's adjudicatory findings address Dane's multiple bone fractures, his low weight, and the failure of respondent-mother

or Willis G. to acknowledge harming Dane or to otherwise account for his physical impairment. The sole additional finding of fact related to Brooke is the following: "On March 17, 2015, [Brooke] had a bone survey for any possible non-accidental trauma. The bone survey found that [Brooke] did not have any acute or healing fractures." The court made no finding concerning her physical or emotional well-being, or more specifically, that she lived in an environment injurious to her welfare, as alleged by GCDHHS, or that she experienced any physical, mental, or emotional impairment or a substantial risk of such impairment as a result thereof.[3] The order thus lacks any ultimate findings of fact that would support the court's conclusion that Brooke is a neglected juvenile as defined by N.C. Gen. Stat. § 7B-101(15). *See In re T.M.M.*, 167 N.C. App. 801, 803–04, 606 S.E.2d 416, 418 (2005); *see also In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (" 'Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts.' " (quoting *Appalachian Poster Adver. Co. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988))).

[3] The guardian *ad litem* (GAL) refers us to the court's dispositional finding that Brooke was involved in therapy to address issues that include "exploring and processing her trauma." We note this finding appears to be based on evidence adduced after the conclusion of the adjudicatory stage of the hearing. Moreover, the record reflects that Brooke's participation in therapy predates GCDHHS's involvement with the family and was initiated by respondent-mother due to Brooke's "negative reactions about her father and her father's side of the family." Indeed, the finding referenced by the GAL states that Brooke "has many negative emotions around her paternal family." In any event, nothing in the trial court's order attributes the "trauma" experienced by Brooke to her home environment.

We note the trial court did announce the following at the conclusion of the adjudicatory stage of the hearing: "The Court will find that the child [Brooke] is neglected in that she lives in an environment injurious to her welfare as alleged in the petitions filed on March 20th." However, "prior opinions of this Court have made clear that, as a general proposition, the written and entered order or judgment controls over an oral rendition of that order or judgment." *In re O.D.S.*, ____ N.C. App. ____, ____, 786 S.E.2d 410, 417 (June 7, 2016) (No. COA15-1148), *disc. review denied*, ___ N.C. ____, ____ S.E.2d ____ (Aug. 18, 2016) (No. 259P16). We must reverse Brooke's adjudication and remand to the trial court to make ultimate findings of fact, based on clear and convincing evidence, to adjudicate the existence or nonexistence of the condition alleged in the petition, to wit: "[Brooke] is a neglected juvenile in that she lives in an environment injurious to her welfare." *See* N.C. Gen. Stat. §§ 7B-805, -807 (2015); *In re T.M.M.*, 167 N.C. App. at 803–04, 606 S.E.2d at 418.

B. Disposition

Respondent-mother next argues that the trial court erred by failing to place Dane and Brooke with their maternal grandparents and instead granting placement authority to GCDHHS. Given the Juvenile Code's preference for placing juveniles with suitable relatives, respondent-mother asserts, the court was required to continue the children's successful placement with their grandparents "unless the court specifically determin[ed] that such placement would not be in the children's best interest."

Section 7B-903 of the Juvenile Code prescribes the dispositional alternatives available to the trial court following an adjudication of abuse or neglect. N.C. Gen. Stat. § 7B-903 (2015). Subsection (a1) provides, in pertinent part, as follows:

> In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile.

N.C. Gen. Stat. § 7B-903(a1) (2015). We have held that a "[f]ailure to make specific findings of fact explaining [why] placement with the relative is not in the juvenile's best interest will result in remand." *In re A.S.*, 203 N.C. App. 140, 141–42, 693 S.E.2d 659, 660 (2010) (citing *In re L.L.*, 172 N.C. App. 689, 704, 616 S.E.2d 392, 401 (2005)).

The trial court's findings reflect the overall success of the children's placement with the maternal grandparents, which began on 1 March 2015, but express "concerns" about certain "behaviors" stemming from the grandparents' animus toward respondent-father's family. As a result of these concerns, the court directed that "[a] meeting . . . take place today, immediately after this hearing, to include the maternal grandparents and the concerns noted are to be worked out in an attempt to leave the juveniles in their current placement." The court did not foreclose continuing the children's placement with the grandparents but vested GCDHHS with "placement responsibility, including the express authority for kinship *and foster care*

placement." (Emphasis added.) Absent findings that the grandparents are unwilling or unable "to provide proper care and supervision of the juvenile[s] in a safe home," or that "the placement is contrary to the best interests of the juvenile[s,]" the trial court's decision runs afoul of N.C. Gen. Stat. § 7B-903(a1) and must be reversed. *In re L.L.*, 172 N.C. App. at 704, 616 S.E.2d at 401.

III. Conclusion

We affirm the trial court's adjudications of Dane as abused and neglected. We reverse Brooke's adjudication and remand with instructions to the trial court to make appropriate findings of fact and conclusions of law to determine whether Brooke is a neglected juvenile in that she lives in an environment injurious to her welfare. We also reverse the dispositional portion of the order and remand for a new disposition hearing. If the court places one or both of the juveniles in out-of-home care, the trial court must first consider whether the maternal grandparents are "willing and able to provide proper care and supervision of the juvenile[s] in a safe home." N.C. Gen. Stat. § 7B-903(a1). If the court elects not to place Dane and/or Brooke with the maternal grandparents, it must make specific findings explaining why the placement is not in the best interests of the children. *Id.*; *see In re L.L.*, 172 N.C. App. at 704, 616 S.E.2d at 401. The trial court may receive additional evidence on remand.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Chief Judge McGEE and Judge DAVIS concur.

Report per Rule 30(e).