IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-664

Filed: 15 November 2016

Wayne County, Nos. 15 JA 119-122

IN THE MATTER OF:

A.S., S.S., B.S., and L.S.

Appeal by Respondent mother from adjudication orders entered 10 February 2016 and disposition orders entered 23 March 2016 by Judge Ericka Y. James in Wayne County District Court. Heard in the Court of Appeals 18 October 2016.

Baddour, Parker, Hine & Hale, P.C., by Helen S. Baddour, for Petitioner.

Mercedes O. Chut for Respondent.

Ellis & Winters LLP, by Paul M. Cox, for the Guardian ad Litem.

STEPHENS, Judge.

Respondent Crystal Abing ("Crystal"), the mother of A.S., S.S., B.S. and L.S.[1] (collectively, "the children"), appeals from the adjudication and disposition orders adjudicating each of the children neglected and dependent,[2] and placing them in the

[1] To protect the children's identities, this opinion will refer to each child by their intitials.

[2] The orders are virtually identical for each child. Therefore, references throughout this opinion to the adjudication order and the findings and conclusions therein refer to each order and the identical findings and conclusions which they contain.

custody of the Petitioner Wayne County Department of Social Services ("DSS"). Crystal argues that the trial court erred in concluding that the children were (1) neglected, because there was no evidence or finding by the court of harm or risk of harm to the children, and (2) dependent, because there was no evidence or finding by the court that Crystal cannot provide for the children or that she lacked appropriate alternative care. Because the necessary findings of the trial court are supported by clear and convincing evidence, and the findings support the court's conclusion of neglect, we affirm the trial court's adjudication of the children as neglected and further affirm the disposition order. However, we reverse the trial court's adjudication of dependency.

Evidence and Procedural Background

The evidence before the trial court tended to show the following:

Crystal and Nicholas S. are the parents of the children: L.S. born in 2005, B.S. born in 2006, S.S. born in 2007, and A.S. born in 2008. Crystal and Nicholas were married on 16 September 2005, and separated in 2010. The couple married in and was originally from Indiana. In 2010, they moved to Florida, where Crystal filed for divorce. While the divorce action was pending in Florida, Crystal took the children and moved to Maine with Dwayne Dyer. The Florida court subsequently entered a judgment dissolving the marriage and awarding primary custody to Nicholas on 10

October 2011. The court awarded Crystal custody on holidays and during summer break.

Crystal continued to live in Maine with the children despite the Florida order. In 2012, Crystal and Dwayne moved with the children to North Carolina. Crystal and Dwayne separated shortly thereafter. On 22 July 2013, Crystal married Nigel Abing. The children lived with Crystal and Nigel until they were removed from the home by Wayne County DSS.

Nigel was in the United States Air Force, stationed at Seymour Johnson Air Force Base in Goldsboro, North Carolina. He worked as a jet engine mechanic in the 911th Air Refueling Squad. In 2013, shortly after Crystal and Nigel got married, they informed Nigel's commanding officer that Crystal had cancer. Because of Crystal's cancer, Nigel was given a lot of time off of work to help care for the children. Often, Crystal would call Dr. Brian Bennett Glodt, the base's chief medical officer, and request that he contact Nigel's commanding officer to send Nigel home. Nigel was absent from work several days a week for a period of months. In addition, Nigel, Crystal, and the children received priority to move to on-base housing, as well as assistance with moving, cleaning, yard work, cooking, and child care from members of Nigel's squadron and their families.

In the spring of 2014, Lt. Colonel Christopher Chad Daniels, Nigel's commanding officer, requested substantiation of Crystal's illness to justify the time

Nigel was taking off from work. In April or May, Lt. Col. Daniels told Nigel that he would not be able to give him more leave without medical documentation.

Crystal was being monitored by the base's Case Management Office, under the supervision of Dr. Glodt, which monitors the health care of people who have "very frequent" clinic or ER visits and/or have very high healthcare costs. The case managers assist patients with referrals, access to care, and consolidation of appointments to try to get appropriate care for patients who have frequent or chronic illness. Crystal never requested any assistance from her case manager for cancer treatment. Crystal claimed that she used a private insurance company for her cancer treatment. However, the Case Management Office reviewed Crystal's medical billing records for 2014 and 2015 to determine if she was receiving any cancer treatment from another provider, and found no evidence of any treatment. In addition, Crystal gave the names of two private physicians that she claimed treated her for cancer, but one denied ever seeing Crystal, and the other had left the practice Crystal named ten years earlier. No one at the base found any evidence Crystal did in fact have cancer. In July 2014, Crystal sent a letter that she was "cancer free now."

Crystal would also frequently call Dr. Glodt to complain of migraines, nausea, vomiting, or other conditions. When Dr. Glodt recommended that Crystal go to the emergency room, she refused. On occasions when Dr. Glodt's staff called an

ambulance to transport Crystal from her home to the hospital based on the symptoms she reported, she refused to go with the emergency medical technicians.

On 26 February 2014, Crystal went to the Johnston Medical Center in Smithfield, North Carolina, complaining of rectal bleeding. The physician who saw Crystal ordered several tests, but was unable to locate any cause for bleeding. A nurse reported that the last time Crystal had come to the center complaining of rectal bleeding, she had punctured her arm with the IV needle, and used the blood to make it appear she was bleeding from the rectum. This time, the physician noted that Crystal immediately went into the bathroom when he informed her he was going to perform an exam, and that he could not confirm what she did in the bathroom.

On 18 May 2014, Crystal went to the Wayne Memorial Hospital emergency room complaining of blood in her stool. The doctors found no abnormalities.

Crystal was treated by Dr. Meredith Godwin, a psychiatrist with Wayne Health Physicians at Wayne Memorial Hospital, on five occasions between June 2015 and November 2015. Crystal self-reported her medical history to Dr. Godwin, including an abusive marriage to Nicholas, and rape by Nigel's former supervisor. Dr. Godwin did have some problems with Crystal providing inconsistent information. She diagnosed Crystal with post-traumatic stress disorder and borderline personality disorder. Borderline personality disorder has many possible symptoms, but is characterized by "unstable interpersonal relationships." Crystal also exhibited

symptoms of explosive anger, an unhealthy fear of abandonment and extreme mood changes between idealism and anxiety, depression, and irritability. In addition, Dr. Godwin observed that Crystal has poor coping skills, meaning that she does not deal with stress and disappointment well, resulting in poor decision-making. One example she gave was Crystal's admission of violating a no-contact order between her and Nigel following a domestic assault incident on base.

Despite issues in Crystal's marriage to Nigel, Dr. Godwin did not feel that Crystal would put her children in physical danger. However, Dr. Godwin also admitted that Crystal's mental health could be emotionally harmful to the children. Her recommended treatment is long term talk therapy, which would have to be provided by a counselor. Dr. Godwin's treatment of Crystal is limited to medication management.

In addition to Crystal's numerous medical issues, she has a history of sexual assault and domestic violence reports. On 2 December 2011, Crystal obtained an order for protection from abuse from the Portland District Court in Maine based on several allegations of physical abuse by Nicholas S., the children's father, against both Crystal and the children. Although Nicholas was served, and he asked the court to dismiss the proceeding, he did not appear for the final hearing, and the protection order was entered by default.

In the summer of 2014, Crystal reported that she had been raped by Nigel's former supervisor and fellow squadron member on two occasions. After an investigation by an Air Force officer outside of Nigel's unit, the Air Force found no evidence of rape, but did find that Crystal and the coworker had had an affair.

Master Sergeant Michael Jolly, the first sergeant for Nigel's squadron, responded to Crystal's and Nigel's home four times between December 2014 and October 2015 for domestic violence reports. Crystal made two calls to base security, and two reports were made by the Family Advocacy office at the base. Crystal's calls to base security alleged domestic assault, but she did not report to Master Sergeant Jolly that Nigel had assaulted her when he responded to the home. The first report made by Family Advocacy was made because the staff heard Crystal say that Nigel held her down, which she later denied. The second report was made when Crystal told the guard at the base gate that everything was not OK, and that "she was going to kill [Nigel]." She then repeated the threat to Master Sergeant Jolly. The children were at home on each occasion that Master Sergeant Jolly responded. He observed them on two of the occasions, but did not see any signs of physical harm.

DSS also received several reports that the children were neglected as a result of domestic violence. On 25 September 2015, DSS social worker Sheila Pridgen went to Crystal's and Nigel's house to investigate one such report. Pridgen was escorted to the house by base security officers. When Pridgen arrived at the house, Crystal was

sitting in the car with L.S. Pridgen asked Crystal if she could speak with L.S., but Crystal refused to let her do so. Crystal took L.S. into the house and would not communicate further with Pridgen. The three other children arrived at the house on their school bus a short time later. Pridgen tried to talk to the three children, but Crystal came outside and directed them to go into the house. Nigel then arrived home. Pridgen asked Nigel to help convince Crystal to cooperate. He was unable to do so.

After approximately an hour, Pridgen left to obtain a nonsecure custody order placing the children in the custody of DSS. The security forces remained at the home to ensure Crystal did not leave with the children. When Pridgen returned with the order that evening, Nigel was on the phone with Crystal, who was still inside the house. Crystal did not open the door. The Goldsboro Police Department broke a glass storm door to get access to the house. Nigel then gave the police a key to the interior door. Once this door was unlocked, Pridgen entered the home. The children were all in one room together. The house "had clothes everywhere . . . on the floor, in the hallway." Pridgen took the children into DSS custody and placed them into foster homes.

On 8 October 2015, the trial court entered orders appointing a guardian *ad litem* and attorney advocate for the children. The trial court heard evidence on 3 December and 10 December 2015. On 14 January 2016, the court adjudicated the

children neglected and dependent. This adjudication was reduced to writing and an order was entered on 10 February 2016 (the "adjudication order").

On 10 March 2016, Judge James presided over the disposition hearing and adopted the recommendations of the guardian *ad litem*, including that Crystal attend therapy, that Nicholas release his medical records, and that Crystal's visits with the children remain supervised. This order was reduced to writing and entered 23 March 2016 (the "disposition order") continuing placement of the children in the custody of DSS.

Discussion

On appeal, Crystal argues that (1) the trial court erred in adjudicating the children neglected, because there was no competent evidence and the trial court made no findings about harm or risk of harm to the children and (2) the trial court erred in adjudicating the children dependent, because there was no evidence that Crystal could not care for the children, and the trial court did not make findings of fact that she both could not care for the children and lacked appropriate alternative child care. We agree that the evidence is insufficient to support the trial court's adjudication of dependency. However, the trial court did not err in adjudicating the children neglected, because there was clear and convincing evidence to support the necessary findings of fact, and the findings of fact supported the trial court's conclusions of law.

1. *Standard of Review*

"The role of this Court in reviewing a trial court's adjudication of neglect and [dependency] is 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)), *modified and aff'd*, 362 N.C. 446, 665 S.E.2d 54 (2008). "The clear and convincing standard is greater than the preponderance of the evidence standard required in most civil cases." *In re J.A.G.*, 172 N.C. App. 708, 712, 617 S.E.2d 325, 329 (2005) (citations and internal quotation marks omitted). "Clear and convincing evidence is evidence which should fully convince." *Id.* "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." *T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523 (citation omitted). "When . . . ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error." *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

"A trial court may take judicial notice of earlier proceedings in the same cause." *In re J.B.*, 172 N.C. App. 1, 16, 616 S.E.2d 264, 273 (2005) (quoting *In re Isenhour*, 101 N.C. App. 550, 553, 400 S.E.2d 71, 73 (1991) (holding that the evidence was sufficient to support the trial court's findings where the trial court based its findings

in part on matters present in the case file, and it was not necessary for the file to be introduced into evidence)). It is not necessary for the trial judge to announce that he or she is taking judicial notice of the matters contained in the court file. *In re M.N.C.*, 176 N.C. App. 114, 121, 625 S.E.2d 627, 632 (2006) (holding that the trial court did not err by making findings in a termination of parental rights proceeding based partly on facts in the court file, despite the fact that the file was not offered into evidence, and the court did not announce it was taking judicial notice of the file). Further, when taking notice of prior orders, "the trial court in a bench trial is presumed to have disregarded any incompetent evidence." *J.B.*, 172 N.C. App. at 16, 616 S.E.2d at 273 (citation and internal quotation marks omitted).

"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). "The district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child. . . . 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) (citing *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 608 (2002), *cert. denied*, 538 U.S. 982, 155 L. Ed. 2d 673 (2003)).

2. Findings of Fact

Crystal argues that several of the trial court's findings of fact should be ignored as either (1) mere recitals of the evidence or (2) findings based on improper post-petition evidence. She further argues that several findings are unsupported by the evidence.

a. Recitals of the evidence

First, Crystal argues that the following findings of fact are merely recitals of the evidence and cannot be properly characterized as findings:

> 53. That there have been numerous domestic violence claims in the home of Crystal and Nigel [] on base.
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> 54. That MSgt Michael Jolly is the 1st Sgt. for the squadron. He had visited the home on at least four occasions because of alleged domestic violence between Nigel and Crystal [] and Crystal['s] children were always there. MSgt Michael Jolly never observed any marks on any of the [] children. Crystal [] would also call or text MSgt. Jolly stating that Nigel [] was needed at home because she was too sick to look after the children.
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> 55. Dr. Meredith Godwin is a psychiatrist with Wayne Health and had seen Crystal [] on approximately five occasions, mainly for medication management. That Crystal [] was treated by Dr. Meredith Godwin for PTSD. That Dr. Godwin also diagnosed [Crystal] with Borderline Personality Disorder (BPD) and ADHD. Dr. Godwin is of the opinion that Crystal [] has poor coping skills. Dr. Godwin has never observed Crystal [] in the presence of her children. Dr. Godwin did have an issue with Crystal [] giving inconsistent information which is not a mental health diagnosis, but which could be a symptom of BPD. Explosive anger is also a symptom of BPD, which Dr. Godwin noted occurred once when Crystal [] reported that Nigel [] put his hands on her to calm her down. Persons

with BPO [sic] have unstable personal relationships and can go quickly within a few hours from wonderful and loving to hatred and self-injurious behavior. There is no cure for BPD, but it is treated with long term talk therapy, which Dr. Godwin recommended for Crystal []. Dr. Godwin also recommended [Crystal] engage in marriage and family therapy, and that she obtain a complete mental health assessment. Dr. Godwin never found [Crystal] to be suicidal or homicidal, and she never appeared impaired. All of the patient history Dr. Godwin received about [Crystal] was the result of self-reporting by [Crystal]. [Crystal] never reported that she had been diagnosed with cancer.

65. That on one occasion in May 2014 when Crystal [] was taken to the Wayne Memorial Hospital emergency room she had a very high level of alcohol. She had been screaming obscenities in the front yard in front of the children. Her level of alcohol was .172. Crystal [] denied that she had been yelling and screaming in her yard and stated that that was the first time she had had any alcohol since 2009. The medical record indicated the [sic] [Crystal] was not sure why she was there or how the doctor could help, though [Crystal] told this Court she was there because her husband's superior officer demanded that she go to the hospital to get a rape kit even though the date of the alleged rape was the previous October, some seven months ago. A report was made to Child Protective Services following this incident.

71. That between 2014 and 2015 multiple reports were made to Child Protective Services. Though services were not recommended in each instance, a report in August 2015 reported that [Nigel] was strangling Crystal [] in front of the children. The juvenile's sibling, [L.S.], walked out from his bedroom to find [Nigel] sitting on his mother's legs holding her arms. Although [Crystal] testified at the initial non secure custody hearing that this happened because she had been raped by her husband's best friend, MSgt John Ross, she testified at the underlying adjudication hearing that she and [Nigel] were only wrestling and that [L.S.] got

> scared and cried. She later said that [L.S.] wasn't even there.

In *Gleisner*, this Court remanded the case which adjudicated a juvenile neglected, in part because the trial court did not make ultimate findings of fact, which in turn prevented this Court from determining whether the trial court's findings supported its conclusions of law. 141 N.C. App. 475, 539 S.E.2d 362. Crystal correctly points out that the Court concluded "it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show." *Gleisner*, 141 N.C. App. at 480, 539 S.E.2d at 366. However, in *Gleisner*, the reason the findings were insufficient was that the trial court made *conflicting* findings which merely recited evidence from both parties. It was in this context of conflicting findings that the Court also reasoned that "[i]f different inferences may be drawn from the evidence, the trial judge must determine which inferences shall be drawn and which shall be rejected." *Id.* 480, 539 S.E.2d at 365-66.

Here, the trial court did not make any conflicting findings which would prevent this Court from determining whether the findings of fact support the trial court's conclusions of law. In addition, none of the challenged findings support multiple inferences. Instead, each finding states the facts that the trial court has found to be established by the evidence.

In addition, findings 65 and 71 note that Crystal's testimony was varied and contrary to the facts found. Despite this, no language indicates that the trial court found Crystal's testimony credible. In fact, finding 72 states that Crystal "has no credibility with [the trial] court." This indicates that the trial court considered Crystal's conflicting testimony, but found that the evidence established the facts as stated in the findings, reflecting the trial court's "own determination as to what pertinent facts are actually established by the evidence." *Id.*, 539 S.E.2d at 366. Crystal's argument that these findings should be disregarded is overruled.

b. Post-petition evidence

Crystal argues that Dr. Godwin's testimony regarding treatment of Crystal after the petition date and findings 67-69, regarding the domestic assault charge from 18 November 2015, should be disregarded as improper post-petition evidence.

The North Carolina Rules of Appellate Procedure require that a party must "present[] to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make" in order to preserve an issue for appellate review. N.C.R. App. P. 10(a)(1) (2016). When no objection was made to the improper admission of evidence in the trial court, this Court will not consider the objection for the first time on appeal. *See In re A.S.*, 190 N.C. App. 679, 689, 661 S.E.2d 313, 319 (2008) (concluding that the parents' challenge to the consideration of facts from their other children's cases was not preserved for appellate

review, because neither parent objected to the evidence at trial), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361, *reh'g denied*, 363 N.C. 381, 678 S.E.2d 231 (2009).

The evidence of Nigel's arrest for assaulting Crystal in November 2015 was introduced into evidence during Crystal's testimony at the adjudication hearing. Crystal did not object, but tried to explain the incident, saying that she didn't press charges and it was her fault. Because Crystal did not object to the admission of, and in fact testified about, the circumstances of the domestic violence incident in November 2015 and Nigel's arrest, this issue is not properly preserved for appellate review.

Further, Crystal cites *In re J.R.*, __ N.C. App. __, 778 S.E.2d 441 (2015) for the proposition that post-petition evidence is inadmissible to adjudicate neglect. Neither that case nor existing case law, however, support disregarding the trial court's findings when no objection was made in the trial court to evidence supporting those findings. In fact, this Court did not reach any holding in *J.R.* regarding post-petition evidence, but rather held that the trial court's adjudication of neglect in that case was not supported by the evidence at the adjudicatory hearing. __ N.C. App. at __, 778 S.E.2d at 445. This Court further determined that the mother's post-petition, future housing conditions did not alter the Court's holding. *Id.* The Court did cite *In re A.B.*, 179 N.C. App. 605, 635 S.E.2d 11 (2006), however, as support for its disregard of the evidence of the mother's future housing conditions. *Id.*

In *A.B.*, this Court held that the trial court did not err in refusing to consider post-petition evidence. 179 N.C. App. at 609, 635 S.E.2d at 15. Importantly, in *A.B.*, the post-petition evidence was not admitted or considered by the trial court. Therefore, unlike in this case, there was no necessity to object to the admission of the evidence in order to preserve the issue for appeal.

c. Unsupported findings

Crystal argues that the following findings of fact in the adjudication order are unsupported by the evidence:

> 48. That in the interim, while Crystal['s] [c]ancer ruse was in full swing, she enrolled [the children] in grief counseling to deal with the trauma of their mother's purported [c]ancer diagnosis.
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> 65. . . . [Crystal] had been screaming obscenities in the yard in front of her children. . . .
> . . . .
>
> 71. That between 2014 and 2015 multiple reports were made to Child Protective Services. Though services were not recommended in each instance, a report in August 2015 reported that [Nigel] was strangling Crystal [] in front of the children. [L.S.] walked out from his bedroom to find [Nigel] sitting on his mother's legs holding her arms. Although [Crystal] testified at the initial non secure custody hearing that this happened because she had been raped by her husband's best friend, MSgt John Ross, she testified at the underlying adjudication hearing that she and Nigel [] were only wrestling and that [L.S.] got scared and cried. She later said that [L.S.] wasn't even there.
> . . . .

> 73. That on September 24, 2015, the night that [the children] were removed from the home of [Crystal], Shelia [sic] Pridgen went to the home to investigate a new complaint alleging that one of the children, [L.S.], had reported to school officials that he was having to look after his siblings and that his mother was not providing for them. . . .
> . . . .
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> 75. . . . That at one point Nigel [] said that he was going to take the children with him and would not reveal where he would go with the children. . . .
> . . . .
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> 78. That when [Sheila Pridgen] could not talk to the children and received a report from the Family Advocacy Center, and was led to believe Nigel [] would take the children, she filed a Petition and Nonsecure Custody Order and returned to get the children.
> . . . .
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> 83. That [Crystal] is unable to provide for the [children]'s care or supervision and lacks an appropriate alternative caregiver.
> . . . .
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> 86. That it is contrary to the welfare of [the children] to be placed in the custody of either parent.
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> 87. That the Court finds that the [children are] neglected and dependent . . . within the meaning of the North Carolina General Statutes.

Crystal also argues that findings 83, 86, and 87 are conclusions of law. We will address each challenged finding in turn.

DSS correctly points out that findings 48, 65, 71, and 73 are based on findings in the trial court's nonsecure custody order dated 8 October 2015. It is clear that the

trial court was taking judicial notice of the prior proceedings in this case from the findings in the adjudication order that an initial nonsecure custody order was issued, followed by "two extensive nonsecure custody hearings," after which nonsecure custody was continued for all of the children. As this Court pointed out in *M.N.C.*, although the better practice would be to explicitly announce that the trial court is taking judicial notice of earlier proceedings, it is not necessary. 176 N.C. App. at 121, 625 S.E.2d at 632. The trial court made the findings in the nonsecure custody order by "clear, cogent, and convincing evidence," the same evidentiary standard required for the adjudication order. Further, the trial court is presumed to have disregarded incompetent evidence. *See J.B.*, 172 N.C. App. at 16, 616 S.E.2d at 273. Crystal has made no argument to overcome the presumption that the trial court disregarded incompetent evidence when it made the findings in the nonsecure custody order. Thus, findings 48, 65, 71, and 73, which are based on the 8 October 2015 nonsecure custody order, are also supported by clear and convincing evidence.

Further support for findings 48 and 65 can be found in the testimony from the adjudicatory hearing. Regarding finding 48, when Crystal was asked at the adjudication hearing why she put the children in grief counseling, she testified that she "just asked the counselor to talk to them." This testimony, while not an explicit admission, tends to support the finding that the children were placed in grief counseling. In a somewhat paradoxical argument, Crystal acknowledges her own

testimony, but argues that it cannot be clear and convincing evidence that she put the children in grief counseling, because the trial court found that she had "no credibility with [the] Court." Despite this finding, "it is the duty of the trial judge . . . to determine the credibility of the witnesses and the weight to be given to their testimony." *Gleisner*, 141 N.C. App. at 480, 539 S.E.2d at 365. The trial court adhered to this duty when it found that Crystal generally had no credibility with the court, but gave weight to her admission against her own interest that the children were in counseling.

Regarding finding 65 that Crystal had been screaming in the yard in front of the children on an occasion in May 2014, Colonel Daniels testified that "there was one episode [of domestic violence] where there . . . was a lot of yelling outside. So much that the neighbors called security forces, and they responded." Together with the previous finding from the nonsecure custody order, there is clear and convincing evidence supporting the trial court's finding.

Crystal next argues that the portions of finding 75 that Nigel said he was going to take the children and finding 78 that Pridgen was led to believe that Nigel would take the children are unsupported by the evidence. We agree. There is no competent evidence in the record to support a finding that Nigel threatened to take the children. While DSS makes no argument that these findings are supported, the guardian *ad litem* argues that they are both supported by the DSS report. However, the DSS

report is not competent evidence where it was not introduced into evidence at the adjudication hearing. *In re A.W.*, 164 N.C. App. 593, 597, 596 S.E.2d 294, 296-97 (2004).[3] Therefore, those portions of findings 75 and 78 which refer to Nigel's threat to kidnap the children are not supported by competent evidence. Consequently, we will not consider these two findings in determining *infra* whether the trial court's findings of fact are sufficient to support its conclusions of law.

Crystal next argues that findings 83, 86, and 87 are more properly classified as conclusions of law. "As a general rule . . . any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a conclusion of law." *In re Everette*, 133 N.C. App. 84, 85, 514 S.E.2d 523, 525 (1999) (citations and internal quotation marks omitted). "Determination that a child is not receiving proper care, supervision, or discipline, requires the exercise of judgment by the trial court, and is more properly a conclusion of law." *Id.* at 86, 514 S.E.2d at 525. However, the determination that a parent lacks an appropriate alternative child care arrangement has been recognized by this Court as a finding of fact. *See, e.g., In re P.M.*, 169 N.C. App. 423, 428, 610 S.E.2d 403, 407 (2005) (holding that an adjudication of dependency was insufficient, because the trial court made no finding

[3] The guardian *ad litem* bases its argument that the trial court can consider the DSS reports on a statement in *In re J.S.*, 165 N.C. App. 509, 598 S.E.2d 658 (2004), that the trial court may consider all written reports submitted in connection with a juvenile proceeding. However, not only did this Court in *J.S.* make that statement in *dicta*, 165 N.C. App. at 511, 598 S.E.2d at 660, it was based upon N.C. Gen. Stat. § 7B-907(b), which was repealed effective 1 October 2013, Act of June 19, 2013, N.C. Sess. Law 2013-129, § 25. Therefore, the reasoning in *J.S.* is inapposite to the case *sub judice*.

that the parent lacked appropriate alternative child care). Thus, the portion of finding 83 which addresses the lack of an appropriate alternative child care arrangement is appropriately classified as a finding of fact.

Similar to the determination that a child is not receiving proper care, a determination of whether placement with the parent is contrary to the welfare of the child requires the exercise of judgment, and thus should be classified as a conclusion of law. Finally, whether a juvenile is neglected and dependent requires the application of legal principles, and is also a conclusion of law. *See In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (noting that the determination of neglect is a conclusion of law, because it requires the application of legal principles). As a result, although mislabeled, we will treat the portion of finding 83 regarding Crystal's inability to provide care or supervision for the children, finding 86, and finding 87 as conclusions of law, and address them below as challenged by Crystal's remaining arguments. *See Johnson v. Adolf*, 149 N.C. App. 876, 878 n.1, 561 S.E.2d 588, 589 n.1 (2002).

3. Adjudication of Neglect

Crystal argues that the trial court erred in concluding that the children were neglected, because (1) the trial court's findings about Crystal's dishonesty are not sufficient to support a conclusion of neglect, (2) the trial court did not a make a finding of harm or substantial risk of harm to the children, and the risk is not obvious from

the findings, (3) the trial court's findings that Crystal did not cooperate and lied to DSS are not sufficient by themselves to support a conclusion of neglect, and (4) the trial court's finding that clothes were strewn about the home is not sufficient by itself to support a conclusion of neglect. Because the trial court's findings taken as a whole support a conclusion of neglect, and because the risk of emotional harm to the children is obvious from the findings, we disagree.

A neglected juvenile is "[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . 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) (2015). "[T]his 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 as a precondition for concluding that a particular juvenile is neglected." *In re S.H.*, 217 N.C. App. 140, 142, 719 S.E.2d 157, 158-59 (2011) (citations and internal quotation marks omitted). "It is well established that the trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home." *Id.* at 142-43, 719 S.E.2d at 159 (citation omitted). A finding concerning the specific harm to a juvenile is not necessary when all the evidence supports such a finding. *In re Safriet*, 112 N.C. App. 747, 753, 436 S.E.2d 898, 902 (1993) (holding

that a finding about the detrimental effect of the mother's lack of care was not necessary when all the evidence, including that the juvenile was filthy, the mother lacked a permanent residence, and no one could contact the mother, supported a finding that the juvenile's physical, emotional, or mental well-being was impaired or at a substantial risk of impairment). "[I]nfliction of injury by a parent to another child or parent, can be conduct causing or potentially causing injury to minors." *In re W.V.*, 204 N.C. App. 290, 294, 693 S.E.2d 383, 386 (2010) (citations and internal quotation marks omitted); *see also In re Helms*, 127 N.C. App. 505, 512, 491 S.E.2d 672, 676 (1997) (reasoning that a mother's repeated exposure of a juvenile to people who abused the mother was a factor supporting an adjudication of neglect).

While Crystal is correct that findings of dishonesty, lack of cooperation, and a messy home are not sufficient individually to support an adjudication of neglect, here, the trial court found all of these conditions. Together, the dishonesty, lack of cooperation with DSS, and messiness can be factors supporting an adjudication of neglect.

Further, although the trial court did not make a finding of substantial risk of harm to the children, the evidence supports such a finding. The court did find that the enrollment of the children in grief counseling was to deal with the trauma of their mother's alleged cancer, which indicates emotional impairment. The evidence also includes: repeated reports of domestic violence where the children were home when

the investigating officer arrived, multiple reports to Child Protective Services following these incidents, an account of one of the children witnessing a domestic assault, an arrest of Nigel for assaulting Crystal, and repeated violation of an order to have no contact with Nigel. This continued exposure to Nigel, a person who is physically abusive toward Crystal, is another factor supporting an adjudication of neglect. *See Helms*, 127 N.C. App. at 512, 491 S.E.2d at 676. Additionally, the evidence shows a mental diagnosis for Crystal which results in unstable personal relationships and explosive anger, an admission of Crystal to the hospital after an episode of screaming in front of the children in her yard when she was also so intoxicated she did not know why she was at the hospital, a report from one of the children that he was taking care of himself and his siblings, and that Crystal repeatedly called for Nigel or other assistance to watch the children because she was too sick to do so. Together with the dishonesty, lack of cooperation with DSS, and messiness of the home, all of this evidence supports a finding of mental or emotional impairment or substantial risk of future physical, mental, or emotional impairment. For this reason, the trial court did not err in adjudicating the children as neglected.

Crystal argues that the unpublished opinion of *In re T.E.*, No. COA15-261, 2015 N.C. App. LEXIS 750, 2015 WL 5431880 (Sep. 15, 2015), establishes that findings about domestic violence which suggest more than one inference about harm to the juvenile cannot support an adjudication of neglect when no specific finding of

impairment is made by the trial court. First, as Crystal notes in her brief, *T.E.* is an unpublished opinion and is therefore not binding on this court. *See United Servs. Auto. Ass'n v. Simpson*, 126 N.C. App. 393, 396, 485 S.E.2d 337, 339, *disc. rev. denied*, 347 N.C. 141, 492 S.E.2d 37 (1997). Second, *T.E.* is easily distinguished from the present case. In *T.E.*, the trial court found only three incidents of domestic violence over a period of five years, and further found that the children were present at only one of them. *T.E.*, No. COA15-261, 2015 N.C. App. LEXIS 750, at *6, 2015 WL 5431880, at *3. In this case, the trial court found that there had been at least four domestic violence reports at the home of Nigel and Crystal, who had been married only two and a half years, and that the children were present on all four occasions. In addition, the trial court in this case made numerous other findings which support a conclusion of neglect, including findings regarding lack of cooperation with DSS, Crystal's medical diagnosis, the messiness of the home, and L.S.'s report that he was taking care of the children. Crystal's argument that the findings of the trial court do not support a conclusion of neglect is overruled.

4. Adjudication of Dependency

Crystal argues that the trial court erred in concluding that the children were dependent, because (1) the trial court did not make any findings that she was unable to care for her children, and (2) the trial court's finding that the children lack an appropriate alternative caregiver lacks evidentiary support and thus cannot support

a conclusion of dependency. We agree that the trial court's finding that Crystal lacked an appropriate alternative child care arrangement is not supported by the evidence, and the adjudication of dependency must be reversed.

A dependent juvenile is "[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) (2015). "[T]he trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *P.M.*, 169 N.C. App. at 427, 610 S.E.2d at 406.

First, the trial court made several findings which indicate that Crystal is unable to provide proper care or supervision for the children. The trial court found that Crystal requested assistance from Dr. Glodt to care for her children, that Crystal stated that she could not look after them because of migraines, that Crystal often requested that Nigel be sent home to watch the children because she could not, that Nigel's squadron provided child care for the children when Crystal was allegedly too sick to do so, that the children have been present on numerous occasions when domestic violence reports have been made at Crystal's home, that Crystal suffers from a diagnosis of borderline personality disorder which results in unstable personal relationships and explosive anger, that Crystal has a pattern and practice of moving

among states to keep the children from their father, and that L.S. reported to school officials that he was taking care of himself and the other children. These findings support the trial court's conclusion that Crystal could not provide proper care or supervision for the children.

Second, the trial court made findings that both parents lacked appropriate alternative child care arrangements. Crystal argues that she suggested her parents as an alternative child care placement, and that there is no evidence to support the trial court's finding that Crystal lacks an appropriate child care arrangement. The testimony of social worker Charity Humbles established that, at the time of the adjudication, the home study for Crystal's parents had been approved, and the only barrier to placing the children with Crystal's parents was court approval. Thus, Crystal did establish an appropriate alternative placement for the children. Consequently, the trial court's finding that Crystal lacked appropriate alternative child care was not supported by clear and convincing evidence. There was no testimony that Crystal's parents were not an appropriate alternative placement for the children. Because this finding is not supported by clear and convincing evidence, the adjudication of dependency must be reversed.

5. Disposition

Crystal makes no argument that the trial court abused its discretion in entering the disposition order. Therefore, Crystal has abandoned this argument. N.C.R. App. P. 28(b)(6) (2016). In addition, as the trial court did not err in adjudicating the children neglected, it was within the discretion of the trial court to enter the disposition order placing the children into DSS custody. *B.W.*, 190 N.C. App. at 336, 665 S.E.2d at 467; *see also In re R.B.B.*, 187 N.C. App. 639, 643, 654 S.E.2d 514, 517 (2007) ("The trial court . . . has broad discretion to craft a disposition designed to serve the juvenile's best interests.").

The opinion of the trial court is

AFFIRMED IN PART; REVERSED IN PART.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).