IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-168

Filed: 2 October 2018

McDowell County, No. 17 JA 73

IN THE MATTER OF: L.L.

Appeal by Respondents from order entered 27 November 2017 by Judge Dennis J. Redwing in District Court, McDowell County. Heard in the Court of Appeals 13 September 2018.

Aaron G. Walker for Petitioner-Appellee McDowell County Department of Social Services.

Anné C. Wright for Respondent-Appellant Father.

Assistant Appellate Defender Joyce L. Terres for Respondent-Appellant Mother.

Jackson A. Barnes for Guardian ad Litem.

McGEE, Chief Judge.

Respondents appeal from order adjudicating their minor child L.L. to be a neglected juvenile. We hold the trial court's findings of fact are insufficient for this Court to conduct meaningful appellate review and we vacate the trial court's order and remand for additional findings.

The McDowell County Department of Social Services ("DSS") filed a petition on 8 June 2017, alleging L.L. was a neglected juvenile because she did not receive proper care, supervision, or discipline from her parents ("Respondents") and lived in an environment injurious to her welfare. DSS had received a report on 7 June 2017 stating that, while L.L. was in Respondents' home on the night of 6 June 2017, Respondent-Father had a "fit of rage" and was hitting things in the house with a baseball bat. The report alleged prior domestic violence between Respondents and raised concerns about Respondent-Father's use of methamphetamine. DSS also alleged L.L.'s school had called DSS at 3:50 p.m. on 7 June 2017 and informed Social Worker Melissa Tate ("Tate") that L.L. was returning to school because no one was at her home to get her off the bus. L.L.'s paternal grandmother ("grandmother") later picked L.L. up from school and took her to DSS offices for an interview with Tate. DSS alleged that L.L. confirmed the allegations in the report regarding Respondent-Father's "hitting stuff with a baseball bat." Additionally, DSS alleged grandmother informed Tate that grandmother went to Respondents' home on the night of 6 June 2017 because Respondents had called her, and that grandmother confirmed Respondent-Father's acts as reported. Grandmother stated that she stayed with L.L. that night in Respondents' home. DSS obtained non-secure custody of L.L. and placed L.L. with grandmother and her paternal grandfather ("grandfather").

After a hearing on 31 October 2017, the trial court entered an "Adjudication, Dispositional and Permanency Planning Order" on 27 November 2017. The trial court concluded that L.L. was a neglected juvenile, continued custody of L.L. with DSS, sanctioned L.L.'s placement with her grandparents, and granted Respondents supervised visitation with L.L. The trial court further set the primary plan for L.L. as reunification and the secondary plan as custody or guardianship. Additionally, the trial court adopted the case plans Respondents had entered into with DSS and ordered Respondents to comply with the plans. Respondents appeal.

Respondents argue the trial court erred in adjudicating L.L. to be a neglected juvenile, because its findings of fact do not support its conclusion and the majority of its findings are unsupported recitations of the allegations in the petition. L.L.'s guardian ad litem also contends that the trial court's adjudication of L.L. is unsupported by its findings of fact, and we agree.

This Court reviews a trial court's adjudication of a child to be a neglected juvenile "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) (citation and quotation 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.* (citation omitted).

The trial court in this case concluded L.L. was a neglected juvenile because she did not receive proper care and supervision, and lived in an environment injurious to her welfare. *See* N.C. Gen. Stat. § 7B-101(15) (2017). In support of its conclusion the trial court found:

> 8. That on June 7, 2017 [DSS] received a child protective services referral alleging that [Respondent-Father] had a fit of rage the night before while [L.L.] was home. [Respondent-Father] was hitting things in the house with a baseball bat. The report also alleged past domestic violence between [Respondents]. There were also concerns in the report about [Respondent-Father's] current drug use (specifically noted as methamphetamine). This report was screened in for neglect with a 24 hour initiation time frame.
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> 9. That [] Tate made initial contact with [Respondents] on the morning of June 7, 2017. [Tate] asked [Respondents] when they would be home in order for [Tate] to initiate and they responded that they would be home later in the evening due to having "appointments[.]" [Tate] asked for permission to see [L.L.] at school; [Respondent's] denied. [Tate] made plans to wait on a phone call from [Respondents] to report that they were home between 3:30 pm and 4:30 pm.
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> 10. That [] Tate received a phone call from [L.L.'s elementary school] at approximately 3:50 pm stating that [L.L.] was returning to school because no one was home to get her off of the bus. [Tate] asked the school to call [Tate] back if they couldn't find anyone to pick up [L.L.].
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> 11. That [] Tate received a phone call from [the school] at approximately 4:30 pm stating that . . . grandmother [] was on her way to pick up [L.L.] [Tate] called [grandmother] to ask her to bring [L.L.] by [DSS] in order to interview [L.L.] about the allegations in the report. [Grandmother] agreed and stated she would arrive a little after 5. [Grandmother]

also mentioned to [Tate] that the family was worried because no one could find [Respondents] so they had informed the Sheriff's Department.

12. That [] Tate met with [grandmother] and [L.L.] at [DSS] around 5:05 pm on June 7, 2017. [Tate] first spoke with [L.L.] about what happened in her home "last night[.]" [L.L.] told [Tate], "Daddy was mad and was yelling and hitting stuff with a baseball bat[.]" To the side, [grandmother] nodded her head in agree[ment]. [Tate] asked [L.L.] why her father was mad and [L.L.] stated she didn't know. [Tate] asked [L.L.] if she felt safe at home and she said "No[.]" [Tate] asked [L.L.] why she didn't feel safe at home and she responded "Because Daddy scares me[.]"

13. That next, [] Tate interviewed [grandmother]. [Grandmother] reported that [Respondent-Father] hasn't slept, eaten, or drank anything in almost four days. "He is convinced that someone is trying to make him fall asleep[.]" [Grandmother] stated that she went to [Respondents'] residence on the night of June 6, 2017 because they had called her. "[Respondent-Father] was acting crazy! He was hitting stuff in the house with a baseball bat, hitting the side of the house, chasing people that weren't there and chasing cars[.]" [Grandmother] stated these actions had been going on for days and neither [Respondent] had done anything to protect [L.L.] [Grandmother] recalled that she stayed at [Respondents'] residence on the night of June 6, 2017 and held [L.L.] until she fell asleep because she had been so scared the past couple days that she ([L.L.]) hadn't been sleeping either. [Grandmother] reported that she took [L.L.] to school the next morning with [Respondents]. "After [L.L.] got out of the car, [Respondents] got into an argument and [Respondent-Father] was yelling and forced [Respondent-Mother's] face up against the glass[.]" [Tate] asked [grandmother] if she would be willing to keep [L.L.] as [L.L.]'s temporary safety provider. [Grandmother] agreed so she and [Tate] filled out and signed the appropriate paperwork.

14. [Respondents] called [Tate] around 6:15 pm on June 7, 2017 to apologize for "sleeping over[.]" They claimed the clock on the phone was broken and they didn't know what time it was. [Tate] explained that [L.L.] was temporarily placed with [grandmother] . . . as [L.L.'s] temporary safety providers. [Respondents] were extremely mad and stated: "There is no way we will agree to letting [L.L.] stay there[.]" [Tate] explained that no one knew where [Respondents] were so DSS had to make an emergency decision. [Tate] notes that [Respondents] were both talking rapidly and slurring their speech while on the phone with [Tate]. [Tate] gave [Respondents] the number for the on-call supervisor Brad Pittman. [Tate] and on-call supervisor Pittman made arrangements with [Respondents] to meet at the office on June 8, 2017 at 2:30 pm or earlier if [Respondents] could make it.

15. That on June 8, 2017 [Respondents] called [Tate] around 10:45 am and stated they would be at the office around 11:30 am or 12:00 pm. [Respondents] called again at 11:30 am and stated that their ride would be [able] to get them around 11:30 am or 12 pm and they would be [at] the office directly after. [Tate] asked [Respondents] if they needed a ride and they declined the offer. [Tate] received a phone call at 12:00 pm and [Respondents] inform[ed] [Tate] that they had no ride. [Tate] advised that she would come out to the house between 2 and 3 to initiate with [Respondents]. [Respondents] called again to talk to [Tate] about [L.L.] coming home today. [Tate] informed [Respondents] that due to the allegations and the results of the interview with [L.L.] that she would be staying with [grandmother] for a while until further investigation. Again, [Respondents] reported that there was "no way" they would agree to [L.L.] staying with [grandmother] "because [grandmother] always makes reports on them and she . . . is just trying to take [L.L.] away[.]" [Tate] asked if [Respondents] would be willing to provide a hair sample for a drug screen. [Respondents] informed [Tate] that cutting their hair was against their religion.

> 16. That over the years, there ha[ve] been at least nine (9) reports received by [DSS] against [Respondents]. These allegations involve injurious environment and improper care multiple times as well as domestic violence and substance use against [Respondents]. [DSS] has exhausted the list of resources for [Respondents] to which they have refused or not benefitted from.
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> 17. [] [R]espondents] were receiving treatment at the McCloud Center in McDowell County in June 2017. It is a substance abuse facility. [] [R]espondents were receiving substances at the McCloud Center to treat pain. [] [R]espondents were not otherwise receiving mental health or substance abuse treatment at that time. [] [R]espondent[-M]other reported to [] Tate that [] [R]espondent[-F]ather was seriously injured in a car accident years ago, that he overdosed on drugs at one time, and that he was not being treated for substance abuse or receiving mental health treatment in June 2017. The [c]ourt finds that [] [R]espondent[-F]ather's lack of mental health and/or substance abuse treatment in June 2017[] contributed to [his] erratic behavior on June 6, 2017 and June 7, 2017 which is described herein.

Respondents argue that findings 8 through 16 are almost verbatim copies of the allegations DSS set forth in its petition. Although this practice is discouraged, *see In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (citation omitted) ("[t]he trial court's findings must consist of more than a recitation of the allegations"), the mere fact that a trial court's order contains findings of fact that are verbatim copies of the petition's allegations is not reversible error *per se*:

> Instead, this Court will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose

> of the case. If we are confident the trial court did so, it is irrelevant whether those findings are taken verbatim from an earlier pleading.

In re J.W., 241 N.C. App. 44, 48-49, 772 S.E.2d 249, 253, *disc. review denied*, 368 N.C. 290, 776 S.E.2d 202 (2015).

However, because the findings of fact are copied wholesale from the petition, they are also replete with recitations of statements, allegations, concerns, reports, and recollections of various persons involved with the case, with no findings indicating that the trial court weighed this evidence, independently determined that it was reliable, and adopted it – or any portions of it – as its own. Therefore, these recitations from the petition are not evidentiary findings that resolve conflicts in the evidence presented to the trial court, nor do they establish facts the court independently found after considering the evidence. *See In re M.K.*, 241 N.C. App. 467, 471, 773 S.E.2d 535, 538 (2015) (citation omitted) ("Our Supreme Court has . . . long required a trial court's findings to reflect a true reconciliation and adjudication of all facts in evidence to enable the appellate courts to review the trial court's conclusions."); *see also In re Bullock*, 229 N.C. App. 373, 379, 748 S.E.2d 27, 31 (2013) (citation and quotation marks omitted) ("The trial court must weigh all of the evidence and in its findings, resolve the conflicts raised, as recitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge.").

The trial court's recitations of the allegations from the petition fail to resolve conflicts raised by the evidence – such as the fact that grandmother's testimony contradicted many of the allegations attributed to her in the petition – or establish basic facts about the case, such as the exact nature of the events of the night of 6 June 2017, or whether the allegations in the prior reports received by DSS regarding Respondents were substantiated. The relevant portions of the trial court's "findings of fact" that constitute proper evidentiary findings adopted by the trial court can be paraphrased as follows: (1) DSS received a referral regarding L.L. on 7 June 2017, and Tate inquired into the allegations of the referral on that same date; (2) Respondents refused to allow Tate to interview L.L. at her school concerning the referral, and it was difficult to arrange any in-person interviews with Respondents; (3) L.L. was returned to her school at approximately 4:00 p.m. on 7 June 2017 because the school bus driver determined "no one was home to get [L.L.] off of the bus[,]" so grandmother was contacted and retrieved L.L. from school; (4) grandmother agreed to take L.L. to be interviewed by Tate, and both L.L. and grandmother were interviewed; (5) DSS placed L.L. with grandmother and grandfather, and an order for nonsecure custody affirming this placement on the basis of neglect was entered 8 June 2017; (6) Respondents refused to provide hair samples for drug screening on the stated basis "that cutting their hair was against their religion[;]" (7) Respondents were receiving some substance abuse treatment "at the McCloud Center . . . in June

2017[;]" but (8) Respondent-Father's lack of mental health and substance treatment contributed to his "erratic behavior on June 6, 2017 and June 7, 2017[.]" There are no actual findings by the trial court concerning what *it* determined Respondent-Father's conduct to be on 6 and 7 June 2017, only recitations of statements made to Tate.

Even assuming, *arguendo*, the valid findings of fact are supported by clear and convincing evidence, these findings are insufficient to support the trial court's conclusion that on 6 and 7 June 2017 L.L. did not "receive proper care [or] supervision . . . from [Respondents]; . . . or [that L.L. was living] in an environment injurious to [her] welfare[.]" N.C.G.S. § 7B-101(15). Therefore, the findings of fact do not support the trial court's adjudication that L.L. is a neglected juvenile. *In re M.K.*, 241 N.C. App. at 471, 773 S.E.2d at 538. Accordingly, we must vacate the trial court's order and "remand for entry of a revised order with appropriate findings of fact and conclusions of law consistent with those findings." *In re Bullock*, 229 N.C. App. at 385, 748 S.E.2d at 35. Because we vacate the trial court's order on this basis, it is unnecessary for us to address the remainder of Respondents' arguments.

VACATED AND REMANDED.

Judges HUNTER, JR. and ARROWOOD concur.

Report per Rule 30(e).