IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-168

Filed: 5 November 2019

Onslow County, No. 18 JA 124

IN THE MATTER OF: A.O.T.

Appeal by Respondent-Mother from order entered 6 November 2018 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 3 October 2019.

No brief filed for Petitioner-Appellee Onslow County Department of Social Services.

Womble Bond Dickinson (US) LLP, by Lawrence F. Matthews and Ryan H. Niland, for Guardian ad Litem.

Leslie C. Rawls for Respondent-Appellant-Mother.

COLLINS, Judge.

Respondent-Mother appeals from the trial court's "Order on Adjudication and Disposition" adjudicating her son "Andy"[1] a neglected juvenile and awarding custody and placement authority to petitioner Onslow County Department of Social Services

[1] Pseudonyms have been used throughout the opinion to protect the identity of the juvenile and for ease of reading.

("DSS"). *See* N.C. Gen. Stat. § 7B-101(15) (2017).[2] We vacate and remand for further findings of fact regarding the adjudication of neglect and, if appropriate, entry of a new disposition, and for correction of a clerical error.

I. Procedural History and Factual Background

Andy was born in early May 2018, approximately one year after Mother married Respondent-Father and relocated from her hometown of Tuscaloosa, Alabama, to Jacksonville, North Carolina. Mother suffered from preeclampsia, and Andy was born prematurely. Mother and child remained in the hospital for a week after the delivery. At the time of Andy's birth, Father was deployed to Romania as a member of the United States Marine Corps.

On 30 May 2018, DSS received a child protective services report alleging Mother sent a series of text messages to Father in which she claimed to have shaken Andy and threatened to kill him. As a result of this incident, Mother agreed to a voluntary kinship placement for Andy with her neighbor, "Ms. O." When the kinship

[2] Subsection 7B-101(15) was amended effective 1 October 2018 to include within the definition of "neglected juvenile" a minor who is the victim of human trafficking. *See* An Act to Amend Various Provisions Under the Laws Governing Adoptions and Juveniles, S.L. 2018-68, §§ 8.1(b), 9.1, ___ N.C. Sess. Laws ___, ___ (June 25, 2018). We apply the version of the statute extant at the time the petition in this cause was filed. *Cf.* N.C. Gen. Stat. § 7B-802 (2017) ("The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition."); *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 15 (2006) (designating "the time period between the child's birth and the filing of the petition as the relevant period for the adjudication"). However, we note the 2018 amendment did not alter the applicable portions of subsection 7B-101(15).

placement proved unsuccessful, DSS obtained nonsecure custody of Andy and filed a juvenile petition on 12 June 2018 alleging neglect and dependency.

After a hearing on 9 October 2018, the trial court entered its "Order on Adjudication and Disposition" adjudicating Andy neglected, maintaining him in DSS custody, and granting Mother and Father monthly supervised visitation. Mother filed timely notice of appeal from the order.

II. Discussion

Mother first challenges the trial court's order as internally inconsistent with regard to Andy's adjudicated status as either neglected or dependent. While we agree with Mother that the order contains an internal inconsistency on this issue, we conclude the discrepancy results from a clerical error.

A clerical error is "an error resulting from a minor mistake or inadvertence, [especially] in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Lark*, 198 N.C. App. 82, 95, 678 S.E.2d 693, 702 (2009) (brackets, internal quotation marks and citation omitted). "When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *Id.* (internal quotation marks and citation omitted).

Here, the trial court announced the following ruling at the conclusion of the adjudicatory stage of the hearing on 9 October 2018:

> The Court does not find dependency but the Court does find based on the testimony this afternoon as well as the verified Petition that the juvenile is a neglected juvenile as defined by the statute.

Consistent with the trial court's oral rendering, the "Order on Adjudication and Disposition" includes the following adjudicatory finding of fact:

> 28. Based on the foregoing facts, the Court concludes that the juvenile is a neglected juvenile within the meaning of N.C. Gen. Stat. §7B-101(15). The Court concludes that the juvenile is not a dependent juvenile within the meaning of N.C. Gen. Stat. §7B-101(9).[3]

The first decretal provision of the order likewise states, "1. The juvenile [Andy] is adjudicated neglected."

However, as Mother notes, the order's "CONCLUSIONS OF LAW" include language at odds with the remainder of the trial court's oral and written rulings, to wit: "2. The juvenile is within the juvenile jurisdiction of the Court as dependent, and that the same has been proven by clear and convincing evidence." Having reviewed the transcript and order, we are satisfied this reference to Andy as dependent in Conclusion 2 is a mere clerical error. We instruct the trial court to correct the order on remand. *See In re J.C.*, 235 N.C. App. 69, 73, 760 S.E.2d 778, 782 (2014) ("remand[ing] for entry of a new adjudication order that reflects the trial

[3] While this ostensible finding is self-evidently a conclusion of law, the trial court's mislabeling of a legal conclusion of law as a finding of fact does not affect its validity, provided the conclusion is otherwise supported by the court's findings. *In re R.A.H.*, 182 N.C. App. 52, 60, 641 S.E.2d 404, 409 (2007).

court's conclusion that the juveniles were neglected, but not dependent"), *rev'd in non-pertinent part*, 368 N.C. 89, 772 S.E.2d 465 (2015) (per curiam).

Mother next claims the trial court's adjudicatory findings of fact are insufficient to support an adjudication of neglect or dependency for Andy. Because we conclude the court did not intend to adjudicate Andy dependent, we review only the adjudication of neglect.

Generally, this Court reviews an adjudication of abuse, neglect, or dependency under N.C. Gen. Stat. § 7B-807 (2017) to determine whether the trial court's findings of fact are supported by "clear and convincing evidence," *id.*, and whether the findings of fact support the conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). Here, because Mother does not challenge any of the trial court's individual findings of fact, we treat the findings as supported by the evidence and binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Whether the trial court's findings establish Andy's status as neglected is a conclusion of law we review de novo. *Helms*, 127 N.C. App. at 510-11, 491 S.E.2d at 675-76.

The Juvenile Code defines a "neglected juvenile," in pertinent part, as one who does not receive "proper care, supervision, or discipline" from the juvenile's parent or "who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15). In order to constitute neglect, there must also 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 Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003) (quotation marks and citation omitted). "Similarly, in order for a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm." *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016). The trial court's failure to find either an actual impairment or a substantial risk of impairment to the juvenile is fatal to an adjudication of neglect, unless "all the evidence supports such a finding." *Padgett*, 156 N.C. App. at 648, 577 S.E.2d at 340.

The petition filed by DSS alleged Andy is neglected because he "does not receive proper care, supervision, or discipline from [his] parent" and because he "lives in an environment injurious to [his] welfare." *See* N.C. Gen. Stat. § 7B-101(15). The trial court made the following findings of fact in support of its neglect adjudication:

> 11. . . . [F]rom the birth of the juvenile through at least the time of the filing of the juvenile Petition, the respondent father was active in the Marine Corps, and was deployed to Romania pursuant to his military service.
>
> 12. Shortly after the birth of the juvenile, while the respondent mother was still in the hospital either a day or two after having given birth to the juvenile, the respondent mother began suffering from post-partum depression.
>
> 13. While she was still in the hospital, the respondent mother shook the hospital bassinet in which the baby was

contained. At that time, the respondent mother was afraid she was going to hurt the child, and called medical personnel to the hospital room, who administered medication to the respondent mother.

14. After the respondent mother and her newborn infant were discharged from the hospital, they went to reside with a friend of the respondent mother, [Ms. O.].

15. Ms. [O.] was present in the home with the mother on the evening of May 29, 2018 while the mother was providing care for the juvenile in the upstairs of Ms. [O.]'s home.

16. On that date, the respondent mother admits that she began screaming and cursing at the child, after which she left the home, and left the infant in the home, by driving away in her car. Ms. [O.] remained in the home at that time.

17. The respondent mother states that at that time, she sent several text messages to the respondent father, the contents of which were admitted into evidence . . . .

18. In those messages, the respondent mother tells the father, among other things, that "I fucking hit him [the baby] and threw him off me and shook him / He wouldn't shut the fuck up"; "he doesn't shut the fuck up / I'm about to fucking shake him / UGHHHHH I WANT HIM DEAD"; I shook him again cause he's being fucking annoying"; "I shook him so much / He won't stop fucking crying and fucking crying"; and "I fucking hate him . . . I'm about to throw him/ I will fucking kill him."

19. The respondent mother . . . testified that while she wanted the respondent father to think that she actually had shaken the baby, she did not actually shake the baby at that time.

20. . . . The Court finds that there were no physical findings

of the baby having been shaken, as the juvenile was seen at the Naval Hospital on May 30, 2018, and as medical providers did not find any injuries to the juvenile. While it is possible that the respondent mother may have shaken the baby on May 29, 2018, the Court finds that the evidence is insufficient to allow the Court to make a finding that the baby was actually shaken.

21. The . . . respondent father believed that the respondent mother had physically harmed the baby, and would shake and/or harm the baby.

22. The respondent father reported to his commanding officers that he had received the text messages from the respondent mother, and forwarded those messages along to members of his command. . . . The respondent father's supervisors did not allow [him] to return home until several weeks after this juvenile Petition had been filed.

23. The Court finds that the respondent mother was in an altered state of mind on or about May 29, 2018, at the time she was providing care for the juvenile, and at the time she sent the text messages to the respondent father. The Court finds [she] was suffering from post-partum depression at that time.

24. The juvenile was placed in a voluntary kinship placement by the respondent mother with Ms. [O.] on or about May 30, 2018.

25. The respondent mother and Ms. [O.] bickered to the point where, as of the date of the filing of the Petition, Ms. [O.] indicated she was no longer willing to provide for placement of the juvenile.

26. At the time of the filing of the Petition, the respondent mother could not provide any other appropriate, alternative childcare arrangements for placement of the juvenile.

> 27. At the time of the filing of the Petition, the respondent father remained deployed in Romania. He also could not provide any other appropriate, alternative childcare arrangements.

As noted above, the court expressly "conclude[d] that the juvenile is a neglected juvenile within the meaning of N.C. Gen. Stat. §7B-101(15)" and decreed that "[t]he juvenile [Andy] is adjudicated neglected."

We agree with Mother that the trial court's findings of fact are insufficient to support the adjudication of neglect. "The findings need to be stated with sufficient specificity in order to allow meaningful appellate review." *In re S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 712 (2011). Here, the court failed to make a finding of ultimate fact identifying which of the two alleged forms of neglect it found to exist: (1) a lack of proper care, supervision, or discipline, or (2) an injurious environment. *See In re T.M.M.*, 167 N.C. App. 801, 803, 606 S.E.2d 416, 417-18 (2005); *see also Appalachian Poster Advertising Co. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988) ("Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts."). Moreover, the court made no finding of any "physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment" as required by our case law.[4] *Padgett*, 156 N.C. App. at 648, 577 S.E.2d at 340; *accord In re K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518.

[4] Findings 16, 17, and 19 recount things respondent-mother "state[d,]" "testified," or "admitted" and are thus "not even really . . . finding[s] of fact." *In re O.W.*, 164 N.C. App. 699, 703,

Upon a review of the hearing transcript, we conclude DSS adduced evidence that would support, though not compel, sufficient findings to support Andy's adjudication as neglected. "[T]he 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." *In re McLean*, 135 N.C. App. 387, 395, 521 S.E.2d 121, 126 (1999). And "[i]t 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." *In re T.S., III*, 178 N.C. App. 110, 113, 631 S.E.2d 19, 22 (2006). However, in light of Mother's testimony that her text messages to Father were not true and were merely an attempt to get his attention, we cannot say "all the evidence supports . . . a finding" that Andy was either harmed or at a substantial risk of harm in his mother's care. *Padgett*, 156 N.C. App. at 648, 577 S.E.2d at 340.

Accordingly, we vacate the trial court's adjudication of neglect and remand for additional findings of fact on the issue of Andy's neglected status.[5] *See In re Bullock*, 229 N.C. App. 373, 385, 748 S.E.2d 27, 35 (2013). In its discretion, the court may—but need not—take additional evidence on remand. *See Heath v. Heath*, 132 N.C. App. 36, 38, 509 S.E.2d 804, 805 (1999). Because we vacate the underlying

596 S.E.2d 851, 854 (2004). We remind the trial court of its duty to make affirmative findings of fact rather than merely recite statements made to DSS or the court. *See id.*

[5] The issue of dependency shall not be before the trial court on remand. *See* N.C. Gen. Stat. § 7B-807(a) (2017) ("If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice . . . .").

adjudication, we must also vacate the trial court's disposition and remand for entry of a disposition, if warranted by the proceedings on remand. *See In re S.C.R.*, 217 N.C. App. at 170, 718 S.E.2d at 713. We decline to review Mother's remaining claim that one of the order's dispositional findings is unsupported by the evidence. *See In re O.W.*, 164 N.C. App. at 703, 596 S.E.2d at 854. We observe, however, that the court received no evidence of respondents' incarceration or involvement in substance abuse or criminal activity.

VACATED AND REMANDED.

Chief Judge McGEE and Judge MURPHY concur.

Report per Rule 30(e).