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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-222

Filed: 5 November 2019

Sampson County, No. 18 JA 43-45

IN THE MATTER OF: T.M., K.B., C.W.

Appeal by Respondent-Mother from orders entered 12 December 2018 by Judge Carol A. Jones in Sampson County District Court. Heard in the Court of Appeals 18 September 2019.

Warrick, Bradshaw, and Lockamy, P.A., by Frank L. Bradshaw, for petitioner-appellee Sampson County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by Ashley A. Edwards, and Womble Bond Dickenson LLP, by Hunter S. Edwards, for guardian ad litem.

Rebekah W. Davis for respondent-appellant mother.

MURPHY, Judge.

Respondent-Appellant (“Josephine¹”), the mother of Klaus, Marco, and Lili (collectively, “the Juveniles”), appeals from the trial court’s orders on adjudication concluding the Juveniles were neglected and dependent and orders on disposition ordering their placement into custody with various family members. Josephine’s

¹ We use pseudonyms for all relevant persons throughout this opinion to protect the juveniles’ identities and for ease of reading.

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primary arguments on appeal are that the trial court's adjudications of neglect and dependency were not supported by the evidence or findings of fact.

To conclude a juvenile is dependent, a trial court must make findings of fact that support a conclusion that the juvenile is in need of assistance or placement because either she has no parent or her parent is unable to provide for her care or supervision or lacks an appropriate alternative child care arrangement. Here, the trial court failed to address Josephine's ability to provide care or supervision to the Juveniles. Without such findings of fact, we must reverse the trial court's conclusions that Klaus, Marco, and Lili were dependent juveniles.

BACKGROUND

On 19 March 2018, Josephine went to the Sampson Regional Medical Center seeking treatment for an asthma attack and an alleged domestic violence incident. Josephine brought two year old Marco with her to the emergency room. The treating doctor did not observe any physical injury but did observe that Josephine appeared intoxicated. Josephine tested positive for amphetamines, cocaine, and marijuana, and Sampson County Department of Social Services ("DSS") and law enforcement were called to the hospital. Josephine "was arrested due to outstanding warrants for failure to appear on marijuana possession[.]" DSS placed Marco in the care of his father, who came to the emergency room and assumed primary responsibility for his care.

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On 23 April 2018, Josephine missed a mental health appointment with Easter Seals and refused to sign a safety plan with DSS. The social worker went to Josephine's address to find out why she had missed her appointments. Josephine responded by "pretty much . . . cursing [the social worker] out, saying that [the social worker] had no right to be there and that she can take care of her own child." After Josephine's mother, the homeowner, allowed the social worker inside, Josephine continued to curse the social worker and "refused to work with [DSS]." That afternoon, DSS took the Juveniles into non-secure custody, placing each with a different family member.

The following day, DSS filed neglect and dependency petitions concerning the Juveniles. The neglect and dependency petitions alleged, in part, that DSS had "received a report regarding the neglect" of the Juveniles on or about 19 March 2018, that—around that same time—Josephine tested positive for cocaine, amphetamines, and marijuana; "was arrested due to outstanding warrants for failure to appear on marijuana possession[;]" and "reported to [a] social worker that she suffers from bipolar, psychotic depression and schizophren[ia]."

On 8 November 2018, the trial court conducted adjudication and disposition hearings. DSS called three witnesses in the adjudication phase, two DSS employees and the resident physician who treated Josephine at the Sampson Regional Medical Center on 19 March 2018. Based on the testimony and other evidence presented by

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DSS, the trial court adjudicated Klaus, Marco, and Lili as neglected and dependent juveniles. During the dispositional phase of the hearing, Marco's father and a foster care social worker for DSS testified. The trial court placed Klaus in the custody of his paternal aunt, Marco in the custody of his father, and Lili in the custody of Josephine's mother, with whom she was already living. All of the trial court's orders were entered 12 December 2018, and Josephine timely appealed on 11 January 2019.

ANALYSIS

In reviewing a trial court's dispositional order, we must determine: "(1) whether the trial court's findings of fact were supported by clear and convincing evidence, and (2) whether its conclusions of law were supported by the findings. Unchallenged findings are binding on appeal. The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*." *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015) (internal citations omitted). We hold the trial court erred in adjudicating Klaus, Marco, and Lili dependent juveniles. We reverse and remand the trial court's dispositional orders and need not reach Josephine's third and fourth arguments on appeal.

A. Adjudication of Neglect

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On appeal, Josephine specifically challenges two of the trial court’s findings of fact, arguing they are not supported by clear and convincing evidence.² The first finding of fact Josephine challenges is that she had been previously diagnosed with bipolar disorder, depression, and schizophrenia and had not received treatment. This finding of fact is supported by clear and convincing evidence in the form of a physician’s report, marked “Plaintiff’s Exhibit 1,” that notes Josephine had been diagnosed and treated for “depression, bipolar, and schizophrenia.” The second finding of fact Josephine challenges is that she “cursed at social services workers during home visits with the Juvenile present.” This finding of fact is directly supported by the social worker’s testimony at the disposition hearing that when she visited Josephine’s home, Josephine “started cursing me out” and later “began cursing me out again[.]” The challenged findings of fact are supported by clear and convincing evidence.

In addition to challenging those findings of fact, Josephine challenges the trial court’s ultimate conclusion that Klaus, Marco, and Lili were neglected juveniles. We review the trial court’s conclusions of law de novo to determine whether those

² Josephine also challenges one finding of fact only as it relates to Marco and Lili, which is that, on 23 April 2018, Josephine “was found sitting on the porch holding the Juvenile or the Juvenile’s sibling with the boyfriend who assaulted her.” Josephine’s argument as to this finding is misguided. She contends only one of the juveniles was with her at that time, so “the evidence did not support the court’s finding that [Josephine] was holding [Marco] or [Lili] in the presence of ‘the boyfriend who assaulted her.’” This argument overlooks the fact that the challenged finding of fact states that Josephine was holding “the Juvenile *or the Juvenile’s sibling*” on the night in question, which is a fact Josephine does not contest.

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conclusions are supported by competent findings of fact, but we may not engage in additional fact-finding on appeal. *In re Montgomery*, 311 N.C. 101, 110-111, 316 S.E.2d 246, 252-53 (1984) (“[O]ur appellate courts are bound by the trial courts’ findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.”). A neglected juvenile is defined, in relevant part, as one who “does not receive proper care, supervision, or discipline” from her parent or guardian or “lives in an environment injurious to [her] welfare.” N.C.G.S. § 7B-101(15) (2017). “In order to adjudicate a juvenile neglected, our courts have additionally required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline.” *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (internal quotation marks and citation omitted).

The findings of fact establish Josephine was under the influence of amphetamines, marijuana, and cocaine when she went to the ER, refused to cooperate with DSS or participate in a treatment plan, and suffered from untreated depression, bipolar disorder, and schizophrenia. These findings of fact support the trial court’s conclusion that the Juveniles were put at a substantial risk of physical, mental, or emotional impairment as a consequence of Josephine’s failure to provide proper care, supervision, and discipline. Josephine’s argument to the contrary is

overruled and the trial court's conclusion that the children were neglected juveniles as defined in N.C.G.S. § 7B-101(15) is affirmed.

B. Adjudication of Dependency

Josephine's second argument on appeal is that the trial court erred in concluding Klaus, Marco, and Lili were dependent juveniles. Our standard of review in resolving this question is the same as above; we must determine "(1) whether the trial court's findings of fact were supported by clear and convincing evidence, and (2) whether its conclusions of law were supported by the findings. Unchallenged findings are binding on appeal. The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*." *In re V.B.*, 239 N.C. App. at 341, 768 S.E.2d at 868 (internal citations omitted). Josephine argues the trial court's findings of fact failed to show that she was unable to provide care or supervision to her children. We agree.

Our General Assembly defines "dependent juvenile"—in relevant part—as a minor child "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.G.S. § 7B-101(9) (2017). Before concluding a juvenile is dependent:

the 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. Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court.

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In re B.M., 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007) (internal citations and quotation marks omitted). A trial court’s determination of dependency must be premised on the parent’s ability to care for or supervise her children at the time of the adjudication hearing. *See In re Z.D.*, 812 S.E.2d 668, 677 (N.C. Ct. App. 2018) (“Petitioners failed to present clear . . . and convincing evidence to support the trial court’s finding that Respondent was currently incapable of caring for her son and that such incapability would continue for the foreseeable future.”).

As we described above, the trial court made valid findings of fact describing Josephine’s bad behavior toward DSS, mental health diagnoses, and positive drug screens. However, its only purported finding of fact explicitly regarding dependency were actually conclusions of law stating that the juveniles were “dependent juvenile[s] pursuant to [N.C.G.S.] § 7B-101(9)” and setting out the definition of that term thereunder. Recognizing that the trial court has wide discretion in weighing the evidence regarding an abuse, neglect, or dependency decision, we still cannot conclude the orders on adjudication contain sufficient findings of fact to conclude Klaus, Marco, and Lili were dependent juveniles.

The orders on adjudication set out findings of fact regarding Josephine’s behavior on two specific dates, 19 March 2018 and 23 April 2018, but do not describe any reason why, at the time of the hearing, there was a present and ongoing reason why Josephine would be unable to care for or supervise the juveniles. Neither DSS

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nor the Guardian Ad Litem present an argument to the contrary on appeal and we see no other finding of fact that supports the conclusion that at the time of the hearing Josephine was unable to provide care or supervision to the Juveniles.

In conclusion, the trial court failed to address Josephine's ability to provide care or supervision to her children in its orders on adjudication. We must reverse and remand "for entry of findings as to the ability of the parent to provide care or supervision **and** the availability of alternative child care arrangements." *In re B.M.*, 183 N.C. App. at 90, 643 S.E.2d at 648. "Where the adjudication of dependency must be reversed and remanded, [we] will not address the remaining assignments of error on appeal." *Id.* Because we reverse the trial court's *Order on Adjudication* for each child, we must also vacate the trial court's three "Order[s] on Disposition and . . . Granting Custody and Releasing Juvenile Court Jurisdiction[,] " which incorporate the findings and conclusions of the now reversed orders.

CONCLUSION

The trial court's conclusion that the Juveniles were neglected juveniles under the definition of N.C.G.S. § 7B-101(15) is supported by valid findings of fact, and is affirmed. However, the trial court's conclusion that the Juveniles were dependent juveniles under N.C.G.S. § 7B-101(9) is not supported by its findings of fact and must be reversed and remanded for entry of findings as to Josephine's ability to provide care and supervision to the Juveniles.

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AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges INMAN and BERGER concur.

Report per Rule 30(e).