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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-269

Filed: 19 November 2019

Sampson County, No. 18 JA 55

IN THE MATTER OF: N.R.R.

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 31 October 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 Timothy P. Logan, for guardian ad litem.*

*Dorothy Hairston Mitchell for respondent-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

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Respondent-Mother appeals from Orders adjudicating her daughter Nori<sup>1</sup> a neglected and dependent juvenile under N.C. Gen. Stat. § 7B-101(9) and (15) (2017)<sup>2</sup> (Adjudication Order) and maintaining the child in the custody of the Sampson County Department of Social Services (DSS) (Disposition Order). The Record tends to show the following:

Nori was born in November 2017. Throughout the period relevant to these proceedings, Respondent-Mother lived with Respondent-Father, Nori's biological father, although Respondent-Mother and Respondent-Father (collectively, Respondent-Parents) were not married.

In May 2018, DSS obtained nonsecure custody of six-month-old Nori and filed a Juvenile Petition alleging she was neglected and dependent. The Juvenile Petition cited DSS's concerns about injuries sustained by another child while in Respondent-Parents' care. DSS also reported Respondent-Mother's disclosures that she was experiencing depression and feelings of anger toward Nori and Respondent-Father's admission to arguments and domestic violence between Respondent-Parents.

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<sup>1</sup> A pseudonym chosen by the parties. See N.C.R. App. P. 42(b).

<sup>2</sup> 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 when the Petition in this case was filed, 24 May 2018. 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"). We note the 2018 amendment did not alter the applicable portions of subsection 7B-101(15).

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On 8 November 2018, the trial court held a hearing on the Juvenile Petition and entered its Adjudication Order and Disposition Order on 12 December 2018. In its Adjudication Order, the trial court made the following relevant Findings of Fact:

5. That [DSS] received a report of potential abuse, neglect, and/or dependency on February 27, 2018.
6. That a child who had been residing in the home of the Respondent Parents had bruising on both sides of his face and a patch of his hair was missing.
7. That the Respondent Parents gave various explanations for the injuries to the other child but denied physical abuse.
8. That, however, the Respondent Mother did admit to suffering from depression and, specifically, to being angry and sad.
9. That the Respondent Father has [an] extensive criminal history including first degree kidnapping, larceny, breaking and entering, and possession of stolen goods.
10. That the Respondent Father was on electronic house arrest when [DSS] was conducting the assessment.  
  
.....
12. That during in-home services the Respondent Mother reported sometimes getting angry with the Juvenile, who was just a baby, and that she gets depressed and angry a lot.
13. That the Respondent Father admitted that the Respondent Parents physically fight one another and that the Respondent Mother had punched and spit into his face.
14. That the Respondent Father further admitted that their domestic discord got so bad on one occasion that the Respondent Mother contacted his probation captain on him

which resulted in him nearly being arrested.

15. That the Respondent Parents were unable to provide a relative who would be able to serve as a temporary safety provider.

Based on these Findings, the trial court concluded Nori was a neglected and dependent juvenile as alleged by DSS. The trial court then granted DSS legal custody and placement authority over Nori and approved her current placement with her adult cousin, Ms. O. The trial court established a primary permanent plan of reunification for Nori with a secondary plan of custody with a relative or other suitable person. Respondent-Parents were each granted at least one hour per week of supervised visitation with their daughter. Respondent-Mother filed timely Notice of Appeal from the trial court's Orders.

### **Issue**

The dispositive issue on appeal is whether the trial court erred by finding grounds to adjudicate Nori as neglected and dependent.<sup>3</sup>

### **Standard of Review**

We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are supported by "clear and convincing competent evidence" and whether the trial court's findings, in turn, support its

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<sup>3</sup> Respondent-Mother challenges several of the trial court's Findings of Fact on the grounds that they are "mere recitations of testimony" by the social workers; however, we do not address this issue because even assuming *arguendo* the trial court's Findings were proper, these Findings nevertheless do not support the trial court's ultimate conclusions.

conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citations omitted). “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) (citations omitted). Erroneous findings will not undermine an adjudication that is otherwise supported by proper findings. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). “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) (citation omitted).

### **Analysis**

#### **I. Adjudication of Neglect**

A “neglected juvenile” is defined, *inter alia*, as a child “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 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) (citation and quotation marks 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

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substantial risk of harm.” *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016) (citation omitted).

The trial court made ultimate findings that Nori “(i) does not receive proper care, supervision, or discipline from [her] parent, guardian, custodian, or caretaker; and (ii) lives in an environment injurious to [her] welfare.” These findings accurately mirror the statutory definition of a neglected juvenile. However, the court’s evidentiary findings fail to demonstrate either that Nori was denied proper care, supervision, or discipline by Respondent-Parents or that she lived in an environment injurious to her welfare. Moreover, the trial court made no finding and received no evidence that Nori experienced an impairment or a substantial risk of impairment as required to sustain an adjudication of neglect. *See In re Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258; *In re K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518.

Assuming *arguendo* that Respondent-Mother suffered from depression and experienced anger when Nori cried, no evidence or findings exist tending to show these depression and anger issues adversely impacted Respondent-Mother’s care, supervision, or discipline of Nori.<sup>4</sup> Likewise, assuming Respondent-Parents experienced domestic “discord” and engaged in physical fights—including an incident where Respondent-Mother punched Respondent-Father and spat in his face—the trial court received no evidence and made no findings that Nori was exposed to, aware

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<sup>4</sup> DSS also adduced no evidence and the trial court made no finding that Respondent-Father’s criminal record adversely affected his parenting of Nori.

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of, or endangered by Respondent-Parents' conflicts. *Cf. In re M.K.*, 241 N.C. App. 467, 475, 773 S.E.2d 535, 541 (2015) ("We have previously held that evidence of a child's *continued exposure* to domestic violence may constitute an environment injurious to the juvenile's welfare." (emphasis added)); *cf. also In re E.P., M.P.*, 183 N.C. App. 301, 307, 645 S.E.2d 772, 776 (affirming dismissal of juvenile petition alleging neglect where "DSS failed to present clear and convincing evidence that the parents' [substance abuse and domestic violence] problems created a substantial risk of harm to the children"), *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007).

Finally, we recognize that "[i]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile . . . has been subjected to abuse or neglect by an adult who regularly lives in the home." N.C. Gen. Stat. § 7B-101(15). Here, however, while the trial court's findings refer to another child who sustained injuries in Respondent-Parents' care, there is simply no evidence and no finding that the child's injuries resulted from abuse or neglect.<sup>5</sup>

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<sup>5</sup> DSS's argument that "there was evidence [Respondent-Parents] had injured another small child who was in their care by repeatedly hitting him in the face and pulling out clumps of his hair" is unsupported by any citation to the Record on Appeal or the hearing transcript. *See* N.C.R. App. P. 28(b)(5)-(6), (c). Similarly, DSS's assertion that Respondent-Parents were charged with child abuse based on the child's injuries and its account of the findings of the child's medical exam find no support in the evidence introduced at the adjudicatory hearing. DSS instead cites to its "Court Report for Dispositional and Review Hearings," which was tendered into evidence after the adjudicatory hearing and was not before the trial court for purposes of adjudication. *See* N.C. Gen. Stat. § 7B-808(a) (2017) ("No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing.").

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In urging this Court to affirm Nori's adjudication as neglected, DSS cites our Supreme Court's recent decision in *In re J.A.M.*, 372 N.C. 1, 822 S.E.2d 693 (2019). In *In re J.A.M.*, the trial court had previously terminated the respondent-mother's parental rights to six children "based largely on the court's finding that she had 'not taken any steps to change the pattern of domestic violence and lack of stability for the children since 2007.'" *Id.* at 3, 822 S.E.2d at 695. The respondent-mother's persistent involvement in violent relationships had resulted in one of her children, "E.G. Jr.[.] suffering severe, life-threatening injuries, including multiple skull fractures, at the hands of E.G. Sr." *Id.* Thereafter, the respondent-mother "refused to acknowledge E.G. Jr.'s 'significant special needs' that resulted from his injuries, maintaining that 'there [was] nothing wrong with him[.]'" and had another child with E.G. Sr. while he was released on bond. *Id.*

Soon after J.A.M. was born, the county Youth and Family Services ("YFS") opened a child protective services investigation based on the respondent-mother's history and the respondent-father's own history of domestic violence. *Id.* at 2, 822 S.E.2d at 694. After the parents declined services and refused to sign a safety assessment, YFS filed a juvenile petition alleging neglect. *Id.* at 2, 4, 822 S.E.2d at 694, 696. Our Supreme Court held these facts were sufficient to show the juvenile lived in an injurious environment exposing her to a substantial risk of physical, mental, or emotional impairment, explaining:



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Combined with the lengthy record from her past cases, the findings that respondent-mother believed she did not need any services from YFS, had opted not to directly confront her romantic partner's prior domestic violence history, and continued to minimize the role her own prior decisions played in the harm her older children had suffered all support a conclusion that respondent-mother had not made sufficient progress in recognizing domestic violence warning signs, in accurately assessing poor decisions from the past, or in identifying helpful resources. It was proper for the trial court to then reach the conclusion that respondent-mother had not developed the skills necessary to avoid placing J.A.M. in a living situation in which she would suffer harm.

*Id.* at 10-11, 822 S.E.2d at 699.

Here, the trial court heard no evidence Respondent-Mother's rights to any child—let alone six other children—had been terminated; that Respondent-Mother had a long history of violent domestic relationships and DSS involvement; that she refused to cooperate with DSS or to acknowledge a need for services; or that she had previously exposed her child to abuse at the hands of a domestic partner. Accordingly, the decision in *In re J.A.M.* is inapposite.

Because neither the hearing evidence nor the trial court's Findings of Fact support a conclusion Nori is a neglected juvenile as defined by N.C. Gen. Stat. § 7B-101(15), we reverse the adjudication of neglect.

II. Adjudication of Dependency

“A dependent juvenile is one ‘in need of assistance or placement because the juvenile has no parent . . . responsible for the juvenile's care or supervision or whose

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parent . . . is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.’” *In re L.W.*, 175 N.C. App. 387, 392, 623 S.E.2d 626, 628 (2006) (alterations in original) (quoting N.C. Gen. Stat. § 7B-101(9)). In support of its adjudication of dependency, the trial court made ultimate findings that “(i) [Nori] needs assistance or placement because [she] has no parent . . . responsible for [her] care or supervision; and (ii) [her] parent . . . is unable to provide for [her] care or supervision and lacks an appropriate alternative child care arrangement.”

As with the adjudication of neglect, the trial court made ultimate findings of fact tracking the statutory definition of dependency. However, we agree with Respondent-Mother the evidence and the trial court’s evidentiary findings do not support these ultimate findings.

With regard to N.C. Gen. Stat. § 7B-101(9)(i), it is undisputed that Nori was residing with both of her biological parents at the time DSS took her into nonsecure custody and filed the Juvenile Petition in this cause. There is thus no evidentiary or factual basis for the trial court’s ultimate finding that Nori “has no parent . . . responsible for [her] care or supervision.” N.C. Gen. Stat. § 7B-101(9)(i). Regarding N.C. Gen. Stat. § 7B-101(9)(ii), having held the evidence and the trial court’s findings fail to show that Nori was neglected while in Respondent-Parents’ care, we further conclude they do not establish Respondent-Parents “are unable to provide for [Nori’s] care or supervision” as required for an adjudication of dependency. *See In re J.A.G.*,

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172 N.C. App. 708, 716, 617 S.E.2d 325, 332 (2005) (“As respondent neither abused nor neglected J.A.G., we conclude J.A.G. was not dependent, because he had a parent capable of providing care and supervision.”). Therefore, we reverse the Adjudication Order on this ground. *Id.*

III. Disposition

Respondent-Mother also challenges a portion of the trial court’s Disposition Order. Because we reverse both of Nori’s adjudications,<sup>6</sup> we also reverse the trial court’s Disposition Order. *In re K.J.B.*, 248 N.C. App. at 357, 797 S.E.2d at 519.

Conclusion

Accordingly, for the foregoing reasons, we reverse the trial court’s Adjudication Order and Disposition Order.

REVERSED.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).

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<sup>6</sup> In light of our conclusion that the evidence would not support findings sufficient to sustain an adjudication of neglect or dependency, we do not remand to the trial court for additional findings. *See Harnett Cnty. ex rel. De la Rosa v. De la Rosa*, 240 N.C. App. 15, 25, 770 S.E.2d 106, 113-14 (2015); *see also* 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[.]”).