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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1130

Filed: 3 November 2020

Rockingham County, No. 19 JA 41

IN THE MATTER OF: L.J.B.

Appeal by Respondent from orders entered 3 September 2019 by Judge Christopher A. Freeman in Rockingham County District Court. Heard in the Court of Appeals 10 June 2020.

Parker Poe Adams & Bernstein LLP, by Daniel E. Peterson, for guardian ad litem.

Benjamin J. Kull for Respondent-Mother.

No brief filed for Rockingham County Department of Social Services.

DILLON, Judge.

Respondent Sunshine Bartlett (“Mother”) appeals from the trial court’s adjudication and disposition orders entered 3 September 2019 adjudicating the minor

child L.J.B. (“Lenny”)¹ neglected and dependent and awarding legal custody to Rockingham County Division of Social Services (“DSS”).

I. Background

In early 2019, Mother moved to North Carolina from Iowa. Mother lives with her mother-in-law and stepson. The juvenile’s father (“Father”) is incarcerated in Missouri for failure to pay child support. He is also a registered sex offender.

Mother and Father are married, but Mother has begun divorce proceedings in Iowa. In addition to the juvenile in this case, Mother has seven other children.² Mother’s parental rights to six of her seven other children have been terminated. She granted guardianship of the seventh child to the child’s maternal grandmother.

In March 2019, Mother gave birth to Lenny. A few days after his birth, Lenny was placed in foster care. DSS believed that Mother had moved to North Carolina because she knew that Iowa Child Protective Services (“Iowa CPS”) would take Lenny away once he was born. DSS also had concerns about Mother letting Father back into her life if he was released from prison. Finally, Mother’s stepson had previously been accused of sexual assault, but was never formally charged due to developmental delays. Mother identified her mother-in-law as her only alternative childcare provider, but DSS was concerned about the stepson’s presence in the home.

¹ A pseudonym has been used throughout the opinion to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b)(1).

² Mother and Father have another child in common: S.B.

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On 10 April 2019, DSS filed a petition alleging that Lenny was neglected and dependent because he (1) does not receive proper care, supervision, or discipline, (2) lives in an environment injurious to the juvenile's welfare, (3) has no parent or guardian responsible for the juvenile's care or supervision, and (4) the parent or guardian lacks an appropriate alternative child care arrangement. DSS attached an Exhibit which, in part, detailed and incorporated Mother's history with Iowa CPS.

In July 2019, an adjudication hearing was held. DSS introduced two termination of parental rights ("TPR") orders into evidence: the first order terminated Mother's rights to five of her children and the second order terminated Mother's rights to her other child with Father. The trial court adjudicated Lenny neglected and dependent and awarded legal custody to DSS with visitation for Mother. Mother appealed to our Court from the adjudication and dispositional orders.

II. Analysis

Mother makes a number of arguments on appeal. We address each in turn.

A. Standard of Review

"The role of this Court in reviewing a trial court's adjudication of neglect[,] abuse [or 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) (internal quotation marks omitted). If the trial court's findings are supported by evidence, they are binding on appeal even if the evidence could support the opposite finding. *Id.* at 343, 648 S.E.2d at 523.

B. Findings of Fact

Mother argues that many of the court's findings of fact in the adjudication order are unsupported by clear and convincing evidence. We agree.

First, Mother argues that DSS never offered into evidence four of the six court orders referenced in the court's adjudication order. During the hearing, DSS offered into evidence two TPR orders labeled Exhibits D and F but failed to offer Exhibits A, B, C, and E. Therefore, only Exhibits D and F were admitted into evidence. However, the adjudication order still references and incorporates the unadmitted orders.

As to the referenced but unadmitted orders, they cannot be used to support the court's findings. "The documents incorporated [into an order] may support a finding of fact; however, merely incorporating the documents by reference is not a sufficient finding of fact." *In re K.L.*, 254 N.C. App. 269, 280, 802 S.E.2d 588, 595 (2017).

Second, Mother argues that DSS did not offer evidence stemming from DSS Social Worker Emily Pulliam's investigation although the findings reference this evidence. Ms. Pulliam did not testify at either hearing. Under this argument, Mother disputes thirty-three (33) findings stemming from Ms. Pulliam's investigation. The

first group of challenged findings deal with DSS's pre-petition investigation. These findings read as follows (under "Additional Findings of Fact"):³

- Record Page 105, Paragraph 1:
 - Sentence 1: "On or about March 7, 2019, the Rockingham County Department of Health and Human Services, Division of Social Services (hereinafter, "RCDHHS") received a neglect report on the minor child subject to this juvenile petition based on injurious environment."
 - Sentence 3: "While hospitalized, the mother reported that her other seven children were in the custody of DSS in Iowa."
 - Sentence 4: "The mother further reported that she came to North Carolina to have [Lenny] so that she could keep him in her custody."

- Record Page 105, Paragraph 2:
 - Sentence 1: "The assigned CPS social worker (SW), Emily Pulliam, met with [Mother] at the hospital to initiate the case."
 - Sentence 2: "[Mother] reported that she resides at [Reidsville address]."
 - Sentence 5: "According to [Mother] she relocated to North Carolina to live with [Father's] family."

- Record Page 105, Paragraph 3:
 - Sentences 1-2: "[Mother] started prenatal care at Shenandoah Medical Center in Iowa with Dr. King in June of 2018. Upon relocating to North Carolina, [Mother] started prenatal care at Women's Heath Centre on February 11, 2019."

- Record Page 105, Paragraph 4:
 - Sentence 1: "The SW confronted [Mother] about the allegation of her relocating to North Carolina so she could keep [Lenny] in her custody."
 - Sentence 2: "[Mother] denied this allegation, but did admit that she was involved with DSS in Montgomery County, Iowa."

- Record Page 105, Paragraph 6:
 - Sentence 1: "[Mother] stated that she appealed both termination orders; however, the termination order regarding the five children was affirmed

³ The court's "Additional Findings of Fact" are not numbered. They are identified here by their location in the Record.

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by the Court of Appeals, but the appeal regarding the termination order on S.B. remains outstanding at this time.”

- Record Page 105, Paragraph 7:
 - Sentence 1: “The SW inquired about the whereabouts of [Father].”
 - Sentences 3-4: “He also has an outstanding warrant in Rockingham County, North Carolina for failure to register an address change as a registered sex offender. Additionally, [Father] has an outstanding warrant in Montgomery County, Iowa for violating a no-contact order with one of [Mother’s] older daughters[.]”

- Record Page 106, Paragraph 1:
 - Sentence 1: “[Mother’s mother-in-law] advised the SW that her son was living in North Carolina until November of 2018 when he turned himself in for back child support.”
 - Sentence 2: “[Mother’s mother-in-law] reported that her son was accused of sexually touching his own nine year old daughter, [J.]”
 - Sentence 4: “[J.] now lives in the state of Utah with her maternal grandparents.”
 - Sentence 6: “[R.B.] is [Father’s] son, and his mother is [B.B.] who resides in Salt Lake City, Utah.”
 - Sentence 7: “According to [Mother’s mother-in-law,] she was involved with DSS in Savannah, Missouri when her children were young.”

- Record Page 106, Paragraph 2:
 - “During this meeting with [Mother] and [Mother’s mother-in-law,] the SW inquired if [Mother] could identify an alternative care provider for [Lenny] upon his release from the hospital. [Mother] stated she did not know anyone else in North Carolina other than [her mother-in-law], and she informed the SW that [Lenny] was going home with her when he was discharged from the hospital. The SW expressed her concerns that the mother’s parental rights to six different children had been terminated. According to [Mother,] she called and spoke with someone at RCDHHS about her circumstances regarding her prior termination of parental rights (“TPR”), and if these prior TPRs could impact her ability to parent her newborn. [Mother] was allegedly told by a representative at RCDHHS that her newborn would not be removed from her care just because she had prior TPRs in another state.

- Record Page 106, Paragraph 3:

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- Sentence 1: “After initiating the case, the SW reached out to Montgomery County DSS (Iowa) to inquire about [Mother’s] CPS history in the state of Iowa.”
- Sentence 2: “The SW spoke with social worker Connie Jones.”
- Sentence 8: “The SW asked Ms. Jones about [Mother’s mother-in-law.]”
- Sentence 11: “Ms. Jones agreed to provide the CPS history to SW Pulliam.”
- Record Page 107, Paragraph 5:
 - Sentence 3: “According to [Mother,] the December 11th TPR order is still under appeal.”
- Record Page 107, Paragraph 6:
 - Sentence 1: “It is believed that [Mother] relocated to North Carolina shortly before the birth of [Lenny] to avoid the removal of this child from her care by Montgomery County DSS in the state of Iowa.”
 - Sentence 3: “Upon [Lenny’s] discharge from the hospital, [Mother] plans to return to [her mother in law’s] home with the minor child.”
- Record Page 108, Paragraph 1:
 - Sentence 2: “[Mother] cannot formulate an alternative plan of care for her son at this time because she does not know anyone in this state.”
 - Sentence 3: “While [Father] is currently incarcerated in the state of Missouri for failure to pay child support, his bond is only \$500.”

The second group of challenged findings deal with Mother’s history with Iowa CPS. These findings read as follows:

- April 27, 2011 – the Iowa Department of Human Services “confirmed” neglect of minor child E.R. based on denial of critical care due to failure to provide proper supervision.
- It is believed that [Father] was arrested for violating a no-contact order regarding the minor children.
- May 16, 2017 – the Iowa Department of Human Services received a CPS report based on physical abuse and denial of critical care. This report involved minor children[.] The report alleged that the mother, [Respondent,] has been physically abusive to all five of her children. There were also concerns about the condition of the home along with limited food

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for the children. During this assessment, the family was already involved in CINA court (Child-In-Need-of-Assistance) in Montgomery County, Iowa based on the April 7, 2017 case where [Mother] allowed the children to be exposed a [sic] registered sex offender, [Father]. On or about June 9, 2017, this case was found “not confirmed.”

- On July 12, 2017, the children were removed from the custody of their mother via an Ex Parte Order signed by the Honorable Amy Zacharias, and the children were placed in relative care and foster care with Teresa Scanlan, the maternal grandmother. . . . During the course of this assessment, [Mother] was still involved in a CINA proceeding with Montgomery County Court. According to CPS records from Iowa, an Adjudication Order from May 25, 2017 made the following finding of fact from Judge Zacharias: “The State was asking for a no contact order be issued [sic] so that [Father] could not have contact with the children. [Mother] did not agree with recommendation and asked that the children continue to have contact with [Father] despite his being a sex offender.” Additionally, the Judge wrote, “[Mother] seemed to have a very hard time understanding why the Court is concerned with [Father] being around the children.” On or about July 31, 2017, the case was “Founded” with regards to the actions of [Mother] and [Father] surrounding the violating of the no contact order, and the risk assessment level was “high[.]”
- On January 4, 2018, social worker Laena Sonntag, with the Montgomery County Department of Human Services, filed an Application for Ex-Parte Order of Temporary Removal regarding S.B. On the same day, Judge Amy Zacharias entered an Ex-Parte Order for Temporary Removal. . . . Additionally, on January 26, 2018, Judge Zacharias signed an Order for Temporary Removal for S.B. . . .

We agree with Mother that the above challenged findings are unsupported as they were not presented in testimony at the hearings. For the following four findings, Mother argued that the findings were only partially unsupported. On Record Page 105, Paragraph 6, Sentence 1, Mother argued that the finding was unsupported to the extent it stated that her appeal was pending because testimony supported that she had lost her appeal. On Record Page 105, Paragraph 7, Sentences 3-4, Mother

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argued that only the reasons for Father's outstanding warrants are unsupported, as testimony only supported the fact that Father had outstanding warrants. On Record Page 106, Paragraph 1, Sentence 6, Mother argued that the finding was unsupported only to the extent that it identified Mother's stepson and a residence location. Finally, on Record Page 108, Paragraph 1, Sentence 3, Mother argued that only the bond amount is unsupported, as testimony supported that Father was incarcerated but no testimony supported the amount of his bond. We agree with these contentions.

Ultimately, "[f]indings of fact must show that the trial court has reviewed the evidence presented and found the facts through a process of logical reasoning." *K.L.*, 254 N.C. App. at 281, 802 S.E.2d at 596. Here, it appears that the trial court merely adopted the allegations DSS presented in its petition without regard to the evidence presented later at the hearing.

C. Neglect Adjudication

Mother also argues that the court's findings do not support the conclusion that Lenny is neglected. We agree.

In relevant part, our General Statutes define a neglected juvenile as:

(15) Neglected juvenile. – Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare . . . In determining whether a juvenile is a neglected juvenile, it is relevant

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whether that juvenile . . . lives in a home whether 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) (2019).

Mother cites to *In re J.A.M.*, 372 N.C. 1, 822 S.E.2d 693 (2019), a neglect case from our Supreme Court. In that case, our Supreme Court concluded:

A court may not adjudicate a juvenile neglected solely based upon previous Department of Social Services involvement relating to other children. Rather, in concluding that a juvenile lives in an environment injurious to the juvenile's welfare, [N.C. Gen. Stat.] § 7B-101(15), the clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile.

Id. at 9, 822 S.E.2d at 698.

In reviewing the findings left unchallenged, we do not find the necessary support for a neglect adjudication because the trial court failed to find any *current* circumstances presenting a risk to the juvenile. Therefore, we vacate the trial court's adjudication of Lenny as neglected.

D. Dependency Adjudication

Finally, Mother argues that the court's findings do not support the conclusion that Lenny is dependent. We agree.

In relevant part, our General Statutes define a dependent juvenile as:

(9) Dependent juvenile. – A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the

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juvenile's care or supervision or (ii) 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) (emphasis added).

“When determining that a child is dependent under this definition, 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.” *In re C.B.*, 245 N.C. App. 197, 211, 783 S.E.2d 206, 215 (2016) (emphasis added) (internal quotation marks omitted). “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.” *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007).

While the trial court did make some unchallenged findings regarding the second prong, it did *not* make sufficient findings regarding the first prong of N.C. Gen. Stat § 7B-101(9)(ii). The trial court’s findings concerning Mother’s ability to provide care or supervision for Lenny were focused on past conduct, bringing in her past CPS history rather than detailing current circumstances. Therefore, we vacate the trial court’s adjudication of Lenny as a dependent child.

III. Conclusion

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We conclude that the challenged findings are unsupported by clear and convincing evidence. We also conclude that the trial court's findings do not support its conclusion that Lenny is a dependent or neglected child.

VACATED AND REMANDED.

Judges ARROWOOD and YOUNG concur.

Report per Rule 30(e).