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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-783

Filed: 7 July 2020

Johnston County, No. 18 JA 143

IN THE MATTER OF: E.R.

Appeal by respondent-mother from orders entered 13 March 2019 and 22 May 2019 by Judge Paul A. Holcombe, III in Johnston County District Court. Heard in the Court of Appeals 9 June 2020.

Jennifer S. O' Connor for petitioner-appellee Johnston County Department of Social Services.

Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-appellant mother.

Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.

BRYANT, Judge.

Where the trial court's findings of fact and conclusions of law were sufficient to establish dependency of the minor child, we affirm the trial court's adjudication and disposition orders as to dependency.

On 17 July 2018, petitioner Johnston County Department of Social Services ("DSS") obtained nonsecure custody of twelve-day-old E.R. ("Eric")¹ and filed a

¹ A pseudonym is used to protect the juvenile's privacy and for ease of reading.

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juvenile petition alleging the minor child was a neglected and dependent juvenile. According to the petition, DSS had been involved with respondent-mother and father since 2015 and had assumed custody of respondents' other children due to neglect issues involving substance abuse, domestic violence, unstable housing, and improper supervision. Both parents' rights to those children were terminated on 27 September 2017. The petition alleged that at birth, on 5 July 2018, Eric tested positive for amphetamines, opiates, and marijuana. In the following days, a social worker arrived at respondent-mother's residence and observed her with Eric. Respondent-mother retreated inside the home upon seeing the social worker and refused to open the door. As a result, DSS was not able to see or assess the child's safety. A few days later, the parents delivered the child to law enforcement, who, in turn, delivered the child to DSS, which had obtained non-secured custody of Eric.

The trial court held an adjudicatory hearing and entered an order adjudicating Eric neglected and dependent on 13 March 2019. A subsequent disposition hearing was held, and the trial court entered an order on 22 May 2019, which granted legal custody and placement authority to DSS, relieved DSS of further efforts to reunify respondents with their children, and allowed visitation plans with the child. Respondent-mother appeals.²

² The child's father is not a party to the appeal.

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On appeal, respondent-mother challenges only the adjudication and disposition as to dependency. Therefore, the trial court's adjudication of Eric as neglected stands unchallenged. Respondent-mother argues that the trial court erred by failing to make sufficient findings of fact to establish that respondent-mother was unable to provide for Eric's proper care or supervision under N.C. Gen. Stat. § 7B-101(9) (2019). We disagree.

Generally, we review an adjudication to determine whether the trial court's findings of fact are supported by "clear and convincing [and] competent evidence" and whether those findings, in turn, support the court's conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). Uncontested findings of fact are "presumed to be supported by competent evidence and [are] binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "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). Likewise, dispositional orders are reviewed for abuse of discretion. *Matter of L.Z.A.*, 249 N.C. App. 628, 641, 792 S.E.2d 160, 170 (2016).

North Carolina General Statutes, section 7B-101(9) provides for two situations where a juvenile can be classified as dependent: "(i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care

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or supervision and lacks an appropriate alternative child care arrangement.” As the first prong is not relevant to our analysis, we examine the findings referencing the second prong only.

“In determining whether a juvenile is dependent, the trial court *must address both . . . the parent’s ability to provide care or supervision, and . . . the availability to the parent of alternative child care arrangements.*” *In re T.B.*, 203 N.C. App. 497, 500, 692 S.E.2d 182, 184 (2010) (emphasis added) (citation and quotation marks omitted). “Findings of fact addressing both [] 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.” *Id.* (citation omitted).

In the instant case, the trial court made the following findings of fact in support of its adjudication and conclusion that Eric was a “dependent juvenile”:

3. The minor child was born in Wilson County, North Carolina, as a result of a C-Section.
4. The mother required general anesthesia due to her combative nature in the delivery room and her inability to calm down.
5. After the delivery, the mother required more pain medication, which is consistent with an individual who has used pain medication enough to build up a high tolerance.
6. The minor child tested positive for controlled substances in his meconium.
7. [Respondent-mother has] a history of involvement with [DSS] resulting [in] the removal of [her] three older

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children . . . who had not been returned at the time of this child's birth.

8. [DSS] became involved . . . due to issues of unstable housing, parenting, domestic violence, and substance abuse issues. The [three older children] were removed from the parents' custody by court order and placed initially with relatives and subsequently in foster care.

....

10. [Respondent-mother's three older children] were subsequently adjudicated as neglected and dependent on or about December 2, 2015.

....

13. During the involvement of [DSS] between July of 2015 and September of 2017, [respondent-mother] did not complete the services of [her] case plans to address the identified risk issues. [Respondent-mother] continued to have instances of domestic violence [with Eric's father], as well as testing positive for controlled substances. . . . [Respondent-mother was] not able to maintain stable and appropriate housing, [and] . . . did not regularly visit the three older children.

....

18. At the time of [Eric's birth], neither parent had resolved the protective issues which had led to the removal of [her] three older children and subsequent involuntarily termination of [her] parental rights[.]

....

20. As the social workers arriv[ed] at [respondent-mother's residence,] . . . [she] was observed on the front porch holding the minor child [but] then quickly turned and took the minor child into the residence.

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21. [DSS] knocked multiple times on the front door, without any response.

22. The home was observed to not have electricity and was in the [sic] state of disrepair. . . .

23. [DSS] subsequently contacted law enforcement for assistance and remained at the home for more than three hours attempting to get [respondent-mother] to respond. [DSS] attempted to contact the father repeatedly on the telephone, with no response.

24. While [DSS] was at the home, the paternal grandparents appeared and indicated that they did not know where the parents were located and further did not know the parents had another child. The grandparents were non responsive to [DSS]. The grandparents were able to contact the father; however, would not allow [DSS] to speak to the father. . . .

. . . .

26. Law enforcement [] subsequently. . . enter[ed] the home to find that [respondent-mother] and [ten-day-old Eric] were not present[.]

27. Upon discovering [respondent-mother and Eric] were missing, the father did not appear to be upset and demanded [DSS] to get off of his property.

. . . .

32. [DSS] was not able to locate [Eric] on July 16, 2018

33. . . . On or about July 19, 2018, [the assigned detective] received a call from the parents [] that they would give law enforcement [] the minor child on July 20, 2018.

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.....

38. The parents were not able to provide [DSS] with appropriate alternative placement possibilities at the time of removal.

39. The parents had not resolved the protective issues, which led to the neglect and removal of the other children, and thus the new minor child, [Eric], was at [] substantial risk of physical and/or emotional impairment while in the care of the parents.

40. Additionally, the environment in which [Eric] resided was an injurious environment.

41. Neither parent was able to provide proper care or supervision and lacked an appropriate alternative care arrangement at the time[] of the filing of the juvenile[s] petition[].

The findings not only reflect that the child was living in an environment injurious to his welfare, but also that respondent-mother could not provide appropriate care and supervision to ensure the safety of the child. Moreover, it is clear that there was no one suitable to act as a guardian to the child at the time of removal.

The trial court heard evidence of respondent-mother's history of concealment, her struggles with mental health and parenting, as well as her failure to resolve the ongoing issues which contributed to the removal of her other children from the home. Specifically, a DSS social worker testified to concerns of living conditions at respondent-mother's residence, stating that the home looked "almost abandoned as if no one had been living there." The social worker had also stated that during the time,

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in which DSS and law enforcement were attempting to locate the child after he tested positive, DSS did not have respondent-mother's phone number to contact or find her, and missing person reports were filed regarding respondent-mother and Eric. Eric's whereabouts were unknown for three days until respondent-mother contacted law enforcement to pick up the child. On this record, the evidence clearly supported the trial court's findings as to respondent-mother's inability to provide care or supervision for the child.

Additionally, after adjudicating the child dependent, the trial court, in its order on disposition, found in pertinent part the following:

14. The [c]ourt previously found in this child's [a]djudication [o]rder filed herein, that the parents' parental rights were involuntarily terminated to their three older children. The [c]ourt finds that the parents, to date, have not adequately or reasonabl[y] made progress [with] the protective issues which led to their rights being terminated.

15. The [c]ourt finds that it is contrary to the juvenile's health and welfare to return to the custody of either parent.

16. The [c]ourt does not find any compelling evidence to continue reunification efforts with either parent.

17. The [c]ourt has explored relative placement and determines that there are no relatives who are willing and able to provide proper care and supervision in a safe home. . . . The [c]ourt finds that the paternal grandparents were previously explored by this court with regards to placement of the parents' older children; however, they were denied as placements. The [c]ourt finds that the paternal grandparents, . . . continue to lack an insight into the

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protective issues in the parents' home which led to the removal of not only this child, but also the parents' three older children. . . . The [c]ourt further finds that the paternal grandparents have concerning health issues and were further uncooperative with law enforcement and [DSS] in locating [respondent-mother] and the minor child, when [respondent-mother] fled with the child. . . .

18. Prior to the filing of the juvenile petition, [DSS] attempted to meet with the parents to address the report that the child tested positive for controlled substances at birth and whether [] the parents had resolved the issues[.] . . . [Respondent-mother] thereafter fled with the minor child and the father was uncooperative. Due to concerns for the child's immediate safety and risk of harm, [DSS] filed a juvenile petition and was granted non secure custody of the juvenile[.]

The court then concluded that DSS's efforts to prevent or eliminate the child's placement were reasonable, and that it was in the best interest of the juvenile that DSS maintain placement authority and cease reunification with respondent-mother.

Accordingly, we hold the trial court made findings sufficient to adjudicate Eric as a dependent juvenile under N.C.G.S. § 7B-101(9). The trial court's orders on adjudication and disposition as to dependency are

AFFIRMED.

Judges INMAN and HAMPSON concur.

Report per Rule 30(e).