IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-942

Filed: 7 July 2020

Guilford County, Nos. 19 JA 280-82

IN THE MATTER OF: H.A.G., S.L.G., E.G.G.

Appeal by respondent-father from order entered 26 June 2019 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 10 June 2020.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Joshua William Cox for guardian ad litem.

Dorothy Hairston Mitchell for respondent-appellant father.

ZACHARY, Judge.

Respondent Larry Goins, the father of "Sally," "Karen," and "Amie,"[1] appeals from an Adjudication and Disposition Order entered 26 June 2019. On appeal, Respondent challenges (1) whether there was sufficient evidence to support the trial

[1] The pseudonyms adopted by the parties are used for ease of reading and to protect the juveniles' identities.

court's adjudications of abuse, neglect, and dependency; and (2) whether the trial court erred by ceasing reunification efforts. After careful review, we reverse.

Background

Respondent adopted the three minor children on 26 June 2012, after first serving as their foster parent. On 26 February 2019, Karen and Amie reported to Spencer Brooks, a social worker with the Guilford County Department of Health and Human Services ("DHHS"), that Respondent was verbally and physically abusive toward them. This was the third report that Respondent was acting in an abusive manner in the seven years since their adoption. Karen and Amie told Brooks that Respondent slapped, hit, kicked, and punched them, leaving marks and bruises. Karen also reported that Respondent forced her to stand barefoot outside in the freezing cold, and on another occasion slammed her head into a metal coat hook. Sally reported that she witnessed the abuse of her older sisters. Karen and Amie said that they were afraid of Respondent, who had threatened to retaliate against them if they reported his abuse. After speaking with Brooks about the children's allegations, Respondent recommended that the children be temporarily placed with their paternal aunt and grandmother, and agreed to limited supervised contact with the children.

Soon thereafter, Brooks learned that two of the children had alleged that, on a prior occasion, they were touched in an inappropriate manner by their cousin, who was approximately 30 years old at the time. They were now living with their cousin's

mother and their grandmother in the grandmother's home. Although Respondent was allegedly aware of the girls' allegations, he suggested that the girls stay there, and did not alert Brooks to this issue. Brooks also received a recording of Respondent arguing with his mother about the DHHS investigation in the children's presence. As a result, a "safety plan" was established in which the children would live in their family home with their aunt, and Respondent would live with the grandmother in her home. The new plan prohibited Respondent from having any contact with the children.

On 26 March 2019, DHHS conducted a "Forensic Interview," in which the children disclosed the physical abuse that they witnessed or to which they were subjected. An "emergency Child and Family Team meeting" was then held to review the case. At this meeting, Brooks, the child protective services supervisor, the facilitator, and the family members discussed the abuse allegations, as well as the allegations that the aunt had taken the children's tablets and "wip[ed] them clean of any evidence" that could be used against her son, the girls' cousin. The team decided that the girls could no longer reside with their aunt, and Respondent could not suggest another long-term living arrangement.

The following day, DHHS filed juvenile petitions alleging that the children were abused, neglected, and dependent. The trial court placed the children in the nonsecure custody of DHHS that day.

On 29 May 2019, the adjudication and disposition hearings were held before the Honorable Angela C. Foster in Guilford County District Court. Brooks's supervisor was the only person to testify at the adjudicatory hearing. At the conclusion of the hearing, which lasted less than 20 minutes, the trial court announced its intention to adjudicate the children to be abused, neglected, and dependent.

The trial court immediately proceeded to the disposition hearing, during which the children's foster-care social worker and guardian *ad litem* supervisor testified. At the conclusion of the hearing, the trial court stated that it did "not find any compelling reasons to reunify these children with" Respondent and ordered that Respondent receive "no visitation under any circumstances."

The trial court's Adjudication and Disposition Order was entered on 26 June 2019. Karen and Amie were adjudicated to be abused, neglected, and dependent, and Sally was adjudicated to be neglected and dependent. Reunification efforts were ceased. Respondent filed timely notice of appeal.

Discussion

Respondent asserts that certain findings of fact are not based on competent evidence, and therefore cannot support the trial court's conclusions adjudicating Karen and Amie as abused, neglected, and dependent, and Sally as neglected and dependent. Specifically, Respondent challenges Findings of Fact # 6-12 as improperly

admitted hearsay testimony. Respondent contends that the trial court erred by admitting the testimony of the child protective services supervisor to the girls' out-of-court statements to Brooks, which he documented in the DHHS records upon which the supervisor based her testimony.

A. Standard of Review

"Where the juvenile is alleged to be abused, neglected, or dependent, the rules of evidence in civil cases shall apply." N.C. Gen. Stat. § 7B-804 (2019). "The trial court's determination as to whether an out-of-court statement constitutes hearsay is reviewed de novo on appeal." *State v. Castaneda*, 215 N.C. App. 144, 147, 715 S.E.2d 290, 293, *disc. review denied*, 365 N.C. 354, 718 S.E.2d 148 (2011). "However, even when the trial court commits error in allowing the admission of hearsay statements, one must show that such error was prejudicial in order to warrant reversal." *In re M.G.T.-B.*, 177 N.C. App. 771, 775, 629 S.E.2d 916, 919 (2006).

"On appeal from an adjudication of neglect, abuse, or dependency, this Court must 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 K.P.*, 249 N.C. App. 620, 624, 790 S.E.2d 744, 747 (2016) (citation and internal quotation marks omitted). Conclusions of law are reviewed de novo. *In re K.B.*, 253 N.C. App. 423, 428, 801 S.E.2d 160, 164 (2017).

B. Admission of Hearsay Evidence

Like other rules of evidence, the rule against the admission of hearsay applies in adjudication hearings. *See In re F.S.*, ___ N.C. App. ___, ___, 835 S.E.2d 465, 468 (2019). "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *In re A.L.T.*, 241 N.C. App. 443, 446-47, 774 S.E.2d 316, 318 (2015) (citation and internal quotation marks omitted). Hearsay is inadmissible unless it falls into one of the hearsay exceptions, or is admissible pursuant to statute. *In re C.R.B.*, 245 N.C. App. 65, 69, 781 S.E.2d 846, 850, *disc. review denied*, 368 N.C. 916, 787 S.E.2d 23 (2016). Similarly, "[h]earsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules." N.C. Gen. Stat. § 8C-1, Rule 805.

As noted by DHHS and the guardian *ad litem*, "[t]his Court has previously determined that even though a witness's knowledge was limited to the contents of the [DHHS] file with which he had familiarized himself, he could properly testify about the records and their significance so long as the records themselves were admissible under the business records exception to the hearsay rule." *In re C.R.B.*, 245 N.C. App. at 69, 781 S.E.2d at 850 (citation and internal quotation marks omitted).

The business records exception renders certain evidence admissible, regardless of the availability of the declarant:

> A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business activity and (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit or by document under seal under Rule 902 of the Rules of Evidence made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

N.C. Gen. Stat. § 8C-1, Rule 803(6).

A business record is properly admitted into evidence "when a proper foundation is laid by testimony of a witness who is familiar with the records and the methods under which they were made so as to satisfy the court that the methods, the sources of information, and the time of preparation render such evidence trustworthy." *In re S.D.J.*, 192 N.C. App. 478, 482, 665 S.E.2d 818, 821 (2008) (citation, ellipses, and internal quotation marks omitted). Moreover, "[w]hile the foundation must be laid by a person familiar with the records and the system under which they are made, there is no requirement that the records be authenticated by the person who made them." *Id.* at 482-83, 665 S.E.2d at 821 (citation and internal quotation marks omitted).

Nevertheless, even where a qualified witness has laid the proper business records foundation, "entries which amount to hearsay on hearsay" remain inadmissible. *State v. Smith*, 157 N.C. App. 493, 497, 581 S.E.2d 448, 450 (2003) (citation omitted) (concluding that the paramedics' statements contained in hospital records amounted to hearsay on hearsay, and were not admissible for the truth of the matter stated under the business records exception where the paramedics' statements were not admissible under another exception to the hearsay rule).

In the instant case, the child protective services supervisor testified, over Respondent's objection, to the children's out-of-court statements to Brooks. From this testimony, the trial court found that:

> 6. [DHHS] became most recently involved with this family on February 26, 2019, when a report was received alleging Injurious Environment, Physical Abuse, and Cruel/Grossly Inappropriate Behavior Modification. [Respondent] physically disciplined [Amie] and [Karen] on several occasions leaving marks and bruises on their arms, legs, and head[s]. [Respondent] was also verbally and physically abusive towards [Amie] and [Karen]. [Sally] has been in the home at the time of the abuse and was aware that [Respondent] was slapping, hitting, kicking, and punching her sisters. On one occasion, [Respondent] slammed [Karen] into the wall, striking a coat hook leaving a lump on the back of her head.
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> 7. On February 26, 2019, [Brooks] met with [Amie] and [Karen] at NW Guilford High School separately. [Amie] appeared to be very sad and nervous about reporting the allegations. [Amie] was afraid for her and [Karen's] safety due to the retaliation from [Respondent] because of previous allegations made. [Karen] was afraid to tell

> anything about the abuse because she feared retaliation from her father who has told her that he would kill her, and anyone, she told about the abuse.

The child protective services supervisor was the sole witness to testify at the adjudicatory hearing.

Initially, Respondent argues that a proper foundation under the business records exception was not laid for the supervisor's testimony. Although the supervisor testified to her familiarity with the records and the methods under which they are regularly made, and to the fact that the records were kept and produced by Brooks in the regular course of business, she did not specifically testify that Brooks prepared the records at or near the time of the act, condition, or event recorded. Respondent maintains that without this attestation, DHHS did not lay a proper foundation for admission of the business records. DHHS contends that with a similar foundation, this Court held that a social worker's testimony was properly admitted under the business records exception, where she testified that "the file's contents were maintained during the regular, ordinary course of [DHHS'] business." *In re C.R.B.*, 245 N.C. App. at 69, 781 S.E.2d at 850 (internal quotation marks omitted).

Even assuming, *arguendo*, that the DHHS records were properly admitted, the supervisor's testimony as to Brooks's notes of the girls' out-of-court statements to him "amount to hearsay on hearsay." *Smith*, 157 N.C. App. at 497, 581 S.E.2d at 450 (citation omitted). Our Court's decision in *In re Mashburn* is dispositive. In *In re*

Mashburn, a minor child reported that she had been sexually abused by her stepfather. 162 N.C. App. 386, 388, 591 S.E.2d 584, 587 (2004). She was then physically examined by Dr. Cynthia Brown, and interviewed by "the nurse in [the] program who ha[d] been trained to do these medical histories. The Health Center maintain[ed] a transcript of such interviews in the ordinary course of business." *Id.* at 393, 591 S.E.2d at 590 (internal quotation marks omitted). At the hearing, Dr. Brown testified regarding the notations of the child's statements to the nurse about her sexual abuse, based on the records of the interview prepared by the nurse. *Id.* at 393-94, 591 S.E.2d at 590.

The respondent-mother argued on appeal that the trial court erred by admitting Dr. Brown's testimony concerning the records of the child's out-of-court statements to the nurse. *Id.* at 393, 591 S.E.2d at 589. Although the physician's testimony concerning the child's out-of-court statements to the nurse constituted hearsay within hearsay, this Court determined that each layer of hearsay was admissible under an exception to the hearsay rule. *See id.* at 393-95, 591 S.E.2d at 589-91. The child's statements to the nurse were for purposes of medical diagnosis or treatment, and fell within that exception. *Id.* at 394, 591 S.E.2d at 590. The physician's testimony from the nurse's records fell within the business records exception. *See id.* at 394-95, 591 S.E.2d at 590-91. Thus, the physician's testimony

as to the records of the child's statements to the nurse was properly admitted into evidence. *Id.* at 395, 591 S.E.2d at 591.

Here, the children's out-of-court statements to Brooks fall within no exception to the hearsay rule. Accordingly, the trial court erred by admitting the supervisor's testimony as to Brooks's notations of the girls' out-of-court statements to him, and by basing its findings of fact and conclusions of law upon this testimony.

C. Prejudice

Notwithstanding the erroneous admission of the children's hearsay statements, "one must show that such error was prejudicial in order to warrant reversal." *In re M.G.T.-B.*, 177 N.C. App. at 775, 629 S.E.2d at 919. Put differently, the appellant must demonstrate that he "was prejudiced and [that] a different result would have likely ensued had the error not occurred." *In re F.S.*, ___ N.C. App. at ___, 835 S.E.2d at 468-69 (citation omitted).

In the instant case, Respondent was undoubtedly prejudiced by the trial court's admission of the hearsay evidence. The child protective services supervisor was the only witness to testify at the short adjudicatory hearing. There is a well-established presumption that "in a bench trial, the trial court will disregard any incompetent evidence." *In re S.D.J.*, 192 N.C. App. at 487, 665 S.E.2d at 824. This presumption does not, however, obviate the need for competent, substantive evidence. *See* N.C. Gen. Stat. § 7B-805 ("The allegations in a petition alleging that a juvenile is abused,

neglected, or dependent shall be proved by clear and convincing evidence."). In the case at bar, if the inadmissible hearsay testimony is disregarded, "[n]o properly admitted clear and convincing evidence supports the trial court's conclusion" that the children were neglected, abused, or dependent. *In re F.S.*, ___ N.C. App. at ___, 835 S.E.2d at 473.

Thus, when we consider the impact of the erroneously admitted hearsay evidence—as we must under our prejudice analysis—it is manifest that the trial court's findings of fact are not supported by clear and convincing evidence. *See* N.C. Gen. Stat. § 7B-807(a). Because the findings of fact must be supported by clear and convincing evidence, and because the conclusions of law must be supported by those findings, *see In re K.P.*, 249 N.C. App. at 624, 790 S.E.2d at 747, we conclude that the erroneous admission of the supervisor's testimony was prejudicial, and that "a different result would have likely ensued had th[is] error not occurred[,]" *In re F.S.*, ___ N.C. App. at ___, 835 S.E.2d at 468-69 (citation omitted).

Based on our foregoing analysis, we need not address Respondent's assertion that the trial court erred by ceasing reunification efforts.

Conclusion

In that the trial court's adjudications of the children were predicated solely on inadmissible hearsay testimony, the allegations were not proven by clear and

convincing evidence. Accordingly, we reverse the trial court's 26 June 2019 Adjudication and Disposition Order.

REVERSED.

Judges BERGER and BROOK concur.

Report per Rule 30(e).