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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-972

Filed: 7 July 2020

Brunswick County, No. 19 JA 2-5

IN THE MATTER OF:

Q.L.H., M.J.H., A.J.H., A.D.H.

Appeal by Respondents from orders entered 1 July 2019 by Judge W. Fred Gore in Brunswick County District Court. Heard in the Court of Appeals 10 June 2020.

*Benjamin J. Kull for Respondent-Mother.*

*Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky L. Brammer, for Respondent-Father.*

*Guardian ad Litem Appellate Counsel Matthew D. Wunsche for the Appellee Guardian ad Litem.*

*No brief for Petitioner-Appellee Brunswick County Department of Social Services.*

BROOK, Judge.

Respondent-Mother and Respondent-Father (collectively, “Respondents”) appeal from an order adjudicating their children Q.L.H. (“Quincy”), M.J.H. (“Michael”), A.J.H. (“Amber”), and A.D.H. (“Andy”)<sup>1</sup> to be neglected juveniles and a

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<sup>1</sup> The parties have stipulated, pursuant to N.C. R. App. P. 42(b), to refer to the children by pseudonym.

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disposition order granting legal and physical custody of the children to the Brunswick County Department of Social Services (“DSS”). Respondents argue that the trial court erred in concluding that their children are neglected juveniles as defined by N.C. Gen. Stat. § 7B-101(15). After careful review, we affirm.

I. Background

A. Factual Background

At the time of adjudication, Quincy was 11 years old, Michael was seven years old, Amber was four years old, and Andy was two years old. Respondent-Father is the biological father of all four children, and Respondent-Mother is the biological mother of Michael, Amber, and Andy. Respondent-Mother is the primary caretaker for the children; Respondent-Father works out of town and is often home only on weekends.

On 21 August 2018, DSS received a report alleging substance abuse, truancy, improper care and supervision, and an injurious environment in Respondents’ home. Social worker Rachel Owens first met with Respondent-Mother on 26 October 2018. During that meeting, Respondent-Mother expressed interest in working on her parenting skills, and she told Ms. Owens that she had previously received counseling for depression and anxiety but stopped attending therapy in 2017. On 15 November 2018, Ms. Owens, Respondent-Mother, and Respondent-Father—participating by phone—had a Child Family Team (“CFT”) meeting at Respondents’ home. Ms. Owens

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noticed that Respondent-Mother's speech was slurred, that she seemed slow to react, and that she spent a significant amount of time in the bathroom before the meeting. Respondent-Mother informed Ms. Owens that she is prescribed Latuda, Gabapentin, and Xanax, and Quincy told Ms. Owens that Respondent-Mother also takes Subutex. Ms. Owens noticed that the home was "untidy" and that Quincy began to clean up when he arrived home from school. At the meeting, both parents acknowledged that the children were not attending regular well-checks at their pediatrician or attending dental appointments.

After the 15 November CFT meeting, DSS created a case plan for Respondents. The goals of the case plan were addressing Respondent-Mother's mental health and the parenting skills of both parents. The case plan required Respondent-Mother to complete a Comprehensive Clinical Assessment ("CCA"), to ensure the children were attending school, and to ensure they received proper medical care, including well-checks and preventive care. DSS also referred Respondents to family preservation services, and Intensive Family Preservation ("IFP") specialist Mandy Mitchell was assigned to Respondents' case. Ms. Owens contacted Respondent-Mother on 19 November 2018 about attending her CCA and a drug screen; Respondent-Mother refused. From that point on, DSS required that Respondent-Mother be constantly supervised while caring for the children; Respondents agreed to this condition of their

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case plan. Ms. Mitchell observed Respondent-Mother to be unsupervised with the children on four occasions after the implementation of the safety plan.

DSS attempted another CFT meeting on 8 January 2019, but neither parent attended. Respondent-Mother refused Ms. Owens access to the home when Ms. Owens attempted to visit. Ms. Owens spoke with Michael at his school, who informed her that he had not eaten dinner the night before; that Quincy often makes him dinner; that his mother often stays in her bedroom or bathroom with the door shut for long periods of time; and that Amber and Andy would cry and knock on the door.

Ms. Owens then filed petitions alleging obstruction or interference with a juvenile investigation based on Respondent-Mother's refusing access to the home, failing to comply with the safety plan, and refusing drug screens. On 9 January 2019, the trial court ordered Respondents to allow DSS to observe the children and to grant DSS access to drug screen results and other relevant medical records.

B. Procedural History

On 9 January 2019, DSS also filed petitions alleging that the children were neglected and dependent. DSS alleged that Respondent-Mother had failed to participate in any random drug screens as required by the safety plan. DSS also alleged that Respondent-Father was aware of the risk to the children when they were in Respondent-Mother's care but that he did nothing to facilitate the safety plan.

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An adjudication hearing was held on 30 May and 5 June 2019. Ms. Owens, Ms. Mitchell, and Respondents testified. The testimony revealed, and the trial court found, that Respondent-Mother was prescribed medications for her mental health and sobriety issues but was not receiving counseling or other mental health services, that she on several occasions refused drug screens and to participate in a CCA; that the children at times went without meals; that she at times was in violation of the case plan's supervision requirement; that the children had never been to the dentist before DSS's involvement; and that Respondent-Mother at times appeared to be over-medicated.

The trial court entered an order 1 July 2019 dismissing the dependency allegations and adjudicating the children neglected as defined by N.C. Gen. Stat. § 7B-101(15). In the disposition order, the trial court granted legal and physical custody of the children to DSS, with placement in its discretion. The trial court fully incorporated the findings of fact from the adjudication order in its disposition order. The trial court ordered a minimum of one hour per week of supervised visitation with the children by Respondents and required Respondents to comply with the Family Services Case Plan.

The court continued custody of the children with DSS and ordered that Respondents "shall make [their] best efforts to fully comply with the Family Services Case Plan." The Family Services Case Plan's objectives included continuing to work

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with DSS according to the original case plan, addressing Respondents' substance abuse, and addressing Respondent-Mother's mental health needs with a CCA. Respondents each noticed appeal on 24 July 2019.

II. Standard of Review

“The role of this Court in reviewing a trial court’s adjudication of neglect . . . 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 marks and citation omitted). Clear and convincing evidence is “evidence which should fully convince[,]” and the standard is “greater than the preponderance of the evidence standard required in most civil cases.” *In re A.K.*, 178 N.C. App. 727, 730, 637 S.E.2d 227, 229 (2006) (internal marks and citations omitted). “If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary.” *In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523. Unchallenged findings of fact are presumed to be supported by clear and convincing evidence and are binding on appeal. *In re T.H.*, 232 N.C. App. 16, 23, 753 S.E.2d 207, 212-13 (2014). We review a trial court’s conclusions of law de novo. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006). Under a de novo review, this Court “considers the matter anew and freely substitutes its own judgment for

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that of the lower tribunal.” *In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 8 (2013) (citation omitted).

We review a dispositional order only for abuse of discretion. *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567 (2002).

III. Analysis

Respondents challenge several of the trial court’s findings of fact as (1) being not supported by clear and convincing evidence, (2) relying on inadmissible hearsay, and (3) being mere recitations of the evidence instead of findings. Respondents challenge findings 5, 11, 21, 28, and 49 as not supported by clear and convincing evidence. Respondent-Mother further challenges findings of fact 19, 21, and 23 as relying on inadmissible hearsay, findings of fact 7, 8, 9, 22, 35, 46, and 48 as not supported by clear and convincing evidence, and findings 5, 9, 16, 18, 22, 28, 29, 35, 37, 39, 40, and 41 as being mere recitations of the evidence. Respondent-Father further challenges findings of fact 19, 23, 27, and 34 as not supported by clear and convincing evidence.

Respondents also challenge the trial court’s conclusion that the children were neglected, and Respondent-Father challenges the disposition order’s requirement that he comply with the Family Services Case Plan.

We address Respondents’ challenges to the findings and conclusions below and affirm the neglect adjudication. We also affirm the dispositional order.

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A. Findings of Fact

We do not address all of Respondents' challenges to the findings of fact because they are unnecessary to support the ultimate conclusions the trial court reached, and any error in them would not constitute reversible error. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (“[W]e agree that some of [the challenged findings] are not supported by evidence in the record. When, however, ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.”). We address the following challenged findings:

7. The Family Preservation worker developed treatment plan goals with the mother . . . These goals included: Medication management for mom; scheduling of primary care appointments for the children's well-checks; substance abuse; parenting skills; and addressing DSS goals.

8. On November 16, 2018, Ms. Owens asked if [Respondent-Mother] could complete a drug screen and her [CCA]. [Respondent-Mother] advised that she was unable to comply because she was with her mother.

9. On November 19, 2018, the Department offered transportation for [Respondent-Mother] to complete a drug screen and her [CCA]. [Respondent-Mother] refused to attend the drug screen or complete the [CCA], but she did advise that she had used cocaine over the weekend. A temporary safety plan was suggested by the Department and agreed to by [Respondent-Mother]. The safety plan required [Respondent-Mother] to be supervised by Department-approved caregivers who could provide supervision between her and her children until clean drug screens could be provided and there was compliance with case plan activities. [Respondent-Mother] provided



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numerous family members, including [Respondent-Father], which were approved for supervision. The children were clean, appropriately dressed and reported feeling safe in their home.

...

16. On December 6, 2018 the social worker received a call from [Michael]'s school regarding concerns that he had ADHD and that his current medication was not addressing the problem.

...

18. December 11, 2018 the family preservation worker contacted social worker with concerns for [Respondent-Mother]'s mental state and thought process. Ms. Mitchell informed the social worker that they had a session in [Respondent-Mother]'s bathroom the other day, and it was odd to the worker.

...

22. On December 13, 2018 the Department made an unannounced home visit and observed the maternal grandmother to be supervising the children with [Respondent-Mother]. The home appeared untidy[,] and there were banana peels lying around and other trash. [Respondent-Mother] was laying [sic] in her bed and stated she thought she may have the flu. [Respondent-Mother] was not alert and was having a difficult time focusing on the conversation. The social worker asked if she could complete a walk-through of the home. [Respondent-Mother] would not allow a walk-through of her home. She claimed that the home was messy[,] and she did not want to be judged. [Respondent-Mother] did advise she had been drug tested by Dr. Seder's office the day previous, and she confirmed that it was an observed test. The social worker talked with [Amber] alone[,] and she informed the social worker that she had not eaten that day but that her Nana was going to fix her something to eat. The children present

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in the home were clean and dressed appropriately. They reported feeling safe in the home with their mother.

...

28. The [CFT] meeting that was scheduled for January 8, 2019 was cancelled as [Respondent-Mother] did not attend and did not call to reschedule. The social worker completed an unannounced visit on the same date. Ms. Owens knocked on the door, but there was no answer. Ms. Owens could hear [Respondent-Mother] speaking inside of the home, as if she were on the phone. Ms. Owens did not hear the voice of anyone talking back to [Respondent-Mother]. Ms. Owens called [Respondent-Mother]'s phone multiple times, to advise of the social worker's presence. [Respondent-Mother] did not answer the door until approximately fifteen minutes after Ms. Owen's arrival. [Respondent-Mother] would not allow the social worker into the home and advised that she had hired an attorney. [Respondent-Mother] stated that her lawyer would be in touch with the social worker. When asked who was supervising, [Respondent-Mother] would not provide a name but stated she was being supervised. No one else was observed to be in the home[,] and there were no cars in the driveway. [Respondent-Mother] would not allow the social worker in her home and would not allow her to speak with [Amber]. Ms. Owens observed [Respondent-Mother] to be unfocused during the conversation and slurring her speech. Ms. Owens found it to be out of the ordinary for [Respondent-Mother] not to allow her in the home.

29. On [8 January 2019], the social worker met with [Michael] at school, and he reported that he did not eat dinner last night, and that usually his brother [Quincy] fixes him dinner such as Chef Boyardee. [Michael] shared that his mom stays in her bathroom a lot and sometimes she will shut the door. He stated that sometimes his little brother and sister will cry when she is in there, and then they knock on the door. [Michael] stated that she stays in there for a long time. He told the social worker that when his mom is tired, she just ignores them. [Michael] reported

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that mom often seems sleepy when he is at home. [Michael] reported that sometimes Aunt Donna or uncle [sic] Jay are at the home, but sometimes not.

...

35. Ms. Mitchell was concerned regarding [Respondent-Mother]'s ability to care for the children as she seemed heavily medicated. She observed [Respondent-Mother] nodding off and several times she was spending extended periods of time in the bathroom. She was "stimming" in the bathroom. [Respondent-Mother] agreed that this was odd behavior[] when she and Ms. Mitchell discussed the matter. Ms. Mitchell advised her that [Respondent-Mother]'s odd behavior could be addressed in mental health services and medication management; however, she did not follow through with mental health services.

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37. During her involvement with the family, Ms. Mitchell observed on four occasions that [Respondent-Mother] was unsupervised with her children, despite the voluntary safety plan in place. On one particular occasion, Ms. Mitchell made a visit to the residence wherein she knocked for 20 to 25 minutes. She could hear [Amber] and [Andy] inside the home[,] and one of the children was crying. One of the safety providers arrived at the residence during this time and accompanied Ms. Mitchell into the home. [Respondent-Mother] was home alone with the children.

...

48. [Respondent-Father] feels that although [Respondent-Mother] suffers from anxiety and does not "do well" with people outside of her family, [Respondent-Mother] has done an amazing job as a mother. [Respondent-Father] takes responsibility for speaking with the medical and school professionals for the children, since he knows [Respondent-Mother] doesn't do well in that realm.

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[Respondent-Father] did not speak with the social worker in this case, due to his work schedule.

Respondent-Mother argues that the portion of Finding 7 that states that the goals of the family preservation program included “substance use[,] [ ] DSS involvement, and parenting skills” is unsupported by the evidence. However, Ms. Mitchell testified that the case plan was intended to address “concerns with substance use and parenting.” This finding is supported by clear and convincing evidence.

Respondent-Mother next argues that Findings 8 and 9 confuse the dates on which Ms. Owens requested that Respondent-Mother complete a drug screen. Finding 8 states, “On November 16, 2018, Ms. Owens asked if [Respondent-Mother] could complete a drug screen and her [CCA].” Finding 9 states that “On November 19, 2018, the Department offered transportation for [Respondent-Mother] to complete her drug screen and her [CCA].” Ms. Owens’s testimony on this point was as follows:

[COUNSEL FOR DSS:] Okay. After the meeting on November 15th, what was your next contact with the family?

[MS. OWENS:] So I contacted [Respondent-Mother] on the 16th which is the day after that asking if she could complete her CCA; also a possible drug screen. No, I’m sorry. CCA that day and she told me she couldn’t go. She was with her mother that day and they were busy out doing some things. And on the 19th I contacted her again to see if she could complete the CCA and also a drug screen and the intensive family preservation worker could provide transportation to that.

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However, Ms. Owens later clarified this testimony:

[COUNSEL FOR DSS:] After you completed the visit [on 15 November 2018,] did you request mom to do anything?

[MS. OWENS]: I did request her to complete her CCA and a drug screen.

[COUNSEL FOR DSS:] Okay. And you asked that she do that the next day?

[MS. OWENS:] Yes. . . . On the 16<sup>th</sup>.

[COUNSEL FOR DSS:] Did she comply on November 16<sup>th</sup> with the CCA and the drug screen?

[MS. OWENS:] She did not.

. . .

[COUNSEL FOR DSS:] Did you ask again for her to complete the CCA or a drug screen?

[MS. OWENS:] I did that following Monday which was the 19<sup>th</sup>.

While Ms. Owens's initial testimony regarding these requests did not clearly establish whether she asked Respondent-Mother to complete a drug screen on both 16 and 19 November or only on 19 November, her later testimony clarified her answer. We therefore conclude that the dates in Findings 8 and 9 are supported by clear and convincing evidence.

Respondent-Mother argues that the portions of Finding 28 indicating that Respondent-Mother hired an attorney and that there were no cars in the driveway are not supported by the evidence. Respondent-Father further argues that the

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portion of Finding 28 that states that Respondent-Mother was “unfocused during the conversation and slurring her speech” is unsupported by the evidence. After a thorough review of the record, we find that Finding 28 is supported in part.

Clear and convincing evidence does not support the portion of the finding that Respondent-Mother told Ms. Owens her lawyer would be in touch with Ms. Owens, that there were no cars in the driveway, that Respondent-Mother was unfocused or slurring her speech, or that Respondent-Mother told Ms. Owens she was being supervised; Ms. Owens’s testimony does not reference any of those details. In fact, Ms. Owens testified on cross-examination that on 8 January 2019, Respondent-Mother “didn’t seem slow functioning or slurring of her speech.” Also during cross-examination, Respondent-Mother’s counsel asked, “As far as with [Respondent-Mother], you don’t have anything in your notes that she seemed not alert or impaired for that unannounced visit [on 8 January 2019]. Do you?” Ms. Owens testified, “Not that I see.” We therefore disregard these unsupported portions of Finding 28.

However, clear and convincing evidence does support that Respondent-Mother did not attend or call to reschedule the 8 January 2019 CFT meeting; that she was unsupervised; and that she did not allow Ms. Owens to enter the home or to speak with Amber. Ms. Owens testified that the meeting on 8 January 2019 did not occur because Respondent-Mother “did not show up for that meeting and after contacting I didn’t get a reply.” She also testified that Respondent-Mother would not allow her in

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the home, and that when Ms. Owens returned to the home with law enforcement, Respondent-Mother was unsupervised.

Respondent-Mother next contests the portion of Finding 35 that states that “Ms. Mitchell was concerned regarding [Respondent-Mother]’s ability to care for the children as she seemed heavily medicated.” Respondent-Mother argues that this finding “mischaracterizes the testimony by drawing a broad conclusion based on a limited, qualified observation” because Ms. Mitchell testified that “*at times* [she] was concerned about [Respondent-Mother]’s ability to take care of the children when she seemed heavily medicated.” We agree with Guardian ad Litem (“GAL”) that this finding is supported by clear and convincing evidence because the testimony supports the substance of the finding: that Ms. Mitchell had concerns about Respondent-Mother’s ability to care for the children because of her medication use.

Respondent-Mother next contends that the portion of Finding 48 that states that Respondent-Father “takes responsibility for speaking with the medical and school professionals for the children, since he knows [Respondent-Mother] doesn’t do well in that realm” is unsupported to the extent it “is a finding that [Respondent-Mother] *never* personally deals with the kids’ doctors or schools[.]” This finding is supported by Respondent-Father’s testimony: “I’ve normally been the one myself to deal with any kind of situations we’ve had regarding our family or major outside responsibilities.” Therefore, the finding that Respondent-Father “takes

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responsibility for speaking with medical and school professionals” is supported by clear and convincing evidence.

Respondent-Mother also objects to several findings because, she argues, they are “mere recitations of the evidence[.]” not “proper findings of fact.”

A trial court must make ultimate findings of fact, which are distinguishable from “the findings of primary, evidentiary, or circumstantial facts” because they “are the final resulting effect reached by processes of logical reasoning from the evidentiary facts[.]” *In re N.D.A.*, 373 N.C. 71, 76, 833 S.E.2d 768, 773 (2019) (citations omitted). Our Supreme Court has stated that “recitations of the testimony of each witness *do not* constitute *findings of fact* by the trial judge[.]” *In re Green*, 67 N.C. App. 501, 505 n.1, 313 S.E.2d 193, 195 n.1 (1984). Where the evidence reveals “conflicting versions” of the facts in question, the trial court must make findings that “reflect a conscious choice” regarding which testimony the trial court deemed credible. *Moore v. Moore*, 160 N.C. App. 569, 571-72, 587 S.E.2d 74, 75 (2003) (citation omitted), *overruled on other grounds by Routten v. Routten*, \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_, 2020 WL 3025954 (2020); *see also In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 366 (2000) (“Where there is directly conflicting evidence on key issues, it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show.”). However, “[t]here is nothing impermissible



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about describing testimony, so long as the court ultimately makes its own findings, resolving any material disputes.” *In re C.L.C.*, 171 N.C. App. 438, 446, 615 S.E.2d 704, 708 (2005), *aff’d per curiam*, 360 N.C. 475, 628 S.E.2d 760, 761 (2006).

Finding 16 states that “the social worker received a call from [Michael]’s school regarding concerns that he had ADHD and that his current medication was not addressing the problem.” Similarly, Finding 18 recites “the family preservation worker [and] social worker[’s] [ ] concerns for [Respondent-Mother]’s mental state and thought process.” Respondent-Mother objects to both findings, arguing that each states, respectively, that Ms. Owens received information and that she was concerned, not that the information she received was true or that her concerns were valid. However, Respondents presented no conflicting testimony on these points that would require the trial court to enter a finding “reflect[ing] a conscious choice” between conflicting accounts. *Moore*, 160 N.C. App. at 571-72, 587 S.E.2d at 75. These findings therefore do not fail to resolve any material dispute.

Similarly, Finding 22 states that Amber “informed the social worker that she had not eaten that day but that her Nana was going to fix her something to eat.” Finding 29 recites what Michael “reported[,]” “shared[,]” “stated[,]” and “told[.]” However, Respondents have not pointed to any evidence that conflicts with Ms. Owens’s testimony regarding what Amber or Michael told Ms. Owens. These findings therefore do not fail to resolve conflicting accounts.

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Respondent-Mother challenges Finding 37, which states in part that “Ms. Mitchell observed on four occasions” that Respondent-Mother was unsupervised with the children. Respondent-Mother argues that this is a mere recitation of the evidence because it “is merely a finding about what Ms. Mitchell said she observed, not that there actually were [four] [ ] such occasions” in which Respondent-Mother was unsupervised. We disagree. Here, Respondent-Mother does not point to any testimony to suggest that the trial court’s finding that Ms. Mitchell observed Respondent-Mother to be unsupervised on four occasions is unsupported by the evidence.

B. Adjudication of Neglect

Respondents contend that the trial court erred in concluding that the children were neglected juveniles. We disagree.

Finding 50 of the adjudication order is as follows:

The juveniles are neglected juveniles as defined by N.C.G.S. 7B-101(15) in that their mother’s mental health and drug dependency issues create a substantial risk of harm to the children based on the children’s nutritional well-being and the mother’s anxiety and lack of supervision and organization. There was a risk of harm to the children due to the lack of needed medical and dental care. The lack of dental care created an actual risk to [Amber], and a potential risk to the others. These issues impact [Respondent-Mother’s] ability to provide proper care or supervision for her children such that they have been exposed to an environment injurious to their welfare. The parents [sic] willful failure to comply with their in-home services case plan created a risk of harm to the children.

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The children's father was aware of the concerns[] and failed to take any steps necessary to eliminate the risks of harm to his children.

While the trial court categorized Finding 50 as a finding of fact, "[t]he determination of neglect requires the application of the legal principles set forth in N.C. Gen. Stat. § [7B-101(15)] and is therefore a conclusion of law." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675-76 (1997). "If a finding of fact is essentially a conclusion of law[,] it will be treated as a conclusion of law[,] which is reviewable on appeal." *In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004) (internal marks and citation omitted). We therefore review the trial court's determination of neglect as a conclusion of law.

North Carolina General Statutes Section 7B-101(15) defines a neglected juvenile as

[a]ny 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[.]

N.C. Gen. Stat. § 7B-101(15) (2019).

In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent. Therefore, the fact that the parent loves or is concerned about his child will not necessarily prevent the court from making a determination that the child is neglected.

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*In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984).

Our case law bears out this child-centered focus of the neglect adjudication. Whereas on the one hand, substance abuse on the part of a parent or guardian, “without proof of adverse impact upon the child, is not a sufficient basis for an adjudication of . . . neglect,” *In re Phifer*, 67 N.C. App. 16, 25, 312 S.E.2d 684, 689 (1984), on the other, our Court has affirmed a neglect adjudication where the children frequently missed school, the respondent-parents refused to cooperate with the assigned social workers, the respondent-mother’s drug dependency impaired her ability to parent, and the children were not receiving preventive medical care and developed medical conditions as a result. *In re H.D.F.*, 197 N.C. App. 480, 489-90, 677 S.E.2d 877, 883 (2009). The bottom line is plain: “this Court require[s] [that] there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment” supporting a neglect adjudication. *In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999) (citations, quotation marks, and emphasis omitted).

Here, the unchallenged findings of fact and the findings that we determined above to be supported by clear and convincing evidence support an adjudication of neglect. The unchallenged findings of fact that support a neglect adjudication are as follows:

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1. That the petition alleging the children to be neglected and dependent juveniles was filed on January 9, 2019[,] and an order was entered placing the juveniles in the physical and legal custody of the [DSS]. The petition was properly signed by the social worker and verified by the Deputy Clerk of Superior Court.

...

3. On October 18, 2018 Rachel Owens, in-home services social worker, received a referral for this family due to truancy issues and concerns with [Respondent-Mother]'s mental health needs. Ms. Owens initially met with the mother on October 26, 2018. [Respondent-Mother] expressed that she would be interested in developing her parenting skills and organizational skills. She advised that the children had been enrolled in school a few days prior, and the delay was due to the family moving and the hurricane. [Respondent-Mother] advised that she had been in therapy in the past for anxiety and depression; however, she was not attending therapy at this time. She was open to receiving mental health services at this meeting.

4. A referral was made to Intensive Family Preservation Services on November 9, 2019. [Respondent-Mother] was in the process of finding a pediatric dentist but had not yet done so when the Department filed the Petition.

...

6. The Case Plan for the mother included: completing a [CCA]; the kids to [sic] attending school regularly; complying with Family Preservation Services; and scheduling well checks for the children.

...

10. On November 20, 2018, Social Worker Owens attempted to take [Respondent-Mother] to Coastal Horizons to complete her [CCA]. At the time the

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Department arrived at the residence, no one was supervising [Respondent-Mother] with the children. [Respondent-Mother] did not want to attend the [CCA] with the two younger children being present. The social worker discussed supports and approved the maternal grandmother and maternal great uncle to be temporary safety providers and completed a home visit at their home. [Respondent-Mother] did not attend the [CCA] on November 20, 2018. Ms. Owens and [Respondent-Mother] discussed [Respondent-Mother]'s completion of a [CCA] the next day. The two younger children, who were in the home on this occasion, were clean and appropriately dressed. The Department offered to arrange daycare assistance to assist [Respondent-Mother] and enable her to attend doctor's appointments. [Respondent-Mother] declined.

...

12. On November 26, 2018, a [CFT] meeting was completed with [Respondent-Mother], the maternal grandmother, and [Ms. Mitchell] to update the case plan to add the temporary safety provider. [Respondent-Father] participated via telephone. The children who were present in the home were clean and dressed appropriately.

13. On November 27, 2019, the social worker made a visit to the home. The children who were present in the home were clean and dressed appropriately.

14. On December 5, 2018 the Department requested a drug screen of [Respondent-Mother] via text message. There was no reply from [Respondent-Mother], and she did not complete [a] drug screen. Ms. Owens visited the two oldest children at school. Both were clean, appropriately dressed and did not note any fears or concerns in the home.

15. On December 6, 2018 the Department requested [that Respondent-Mother] complete a drug screen. [Respondent-Mother] advised that she would be in Wilmington all day for doctor's appointments, and she stated she would be completing a screen at her doctor's office. The social

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worker asked if she could complete a drug screen at Arc Point Labs, a testing site located in Wilmington. A referral was sent to Arc Point. She did not attend the drug screen.

...

17. On December 7, 2018, the Department informed [Respondent-Mother] of [Michael]'s behaviors at school and asked about her not completing drug screens as requested. [Respondent-Mother] advised that she would be taking [Michael] to the Knox Clinic as a walk-in to discuss his medications; however, the Department learned later that she did not take [Michael] to the Knox Clinic that day. [Respondent-Mother] informed the social worker that she would only complete drug screens at her doctor's office or have an in-home nurse come to administer them. [Respondent-Mother] executed a release of information to allow the social worker to receive screens from [Respondent-Mother]'s doctor. [Respondent-Mother] agreed to complete her [CCA] the following week.

...

20. On December 12, 2018 Ms. Mitchell transported the family for the children's dental appointments in Shallotte. This was the first occasion that any of the children had been to a dentist. [Amber] was found to be in need of significant dental work, which would require sedation.

...

24. On December 27, 2018, Ms. Mitchell went to the home to provide [Respondent-Mother] with a Certificate of Completion for the Family Preservation program. [Respondent-Mother] was home with the children without the supervision of another adult.

25. On the day of the meeting, [Respondent-Mother] cancelled due to [Amber's] and [Andy's] not feeling well. The social worker rescheduled the meeting for January 8, 2019 and asked [Respondent-Mother] who was supervising

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her with the children. There was no reply from [Respondent-Mother].

26. On January 4, 2019, Ms. Owens attempted a home visit with the family. There was no answer at the door. Ms. Owens saw the oldest two children at the school. They were clean, dressed appropriately, and did not note any concerns. . . .

. . .

30. [Respondent-Mother] had open heart surgery in 2012. [Respondent-Mother] sees a cardiologist[,] and she has a pacemaker.

31. [Respondent-Mother] does not have a driver's license due to her anxiety, the heart surgery[,] and a car accident she was involved in in December 2010. She does not own a vehicle.

32. The Department filed [an] obstruction petition on January 8, 2019 due to [Respondent-Mother's] not allowing access to her home or to the children. When the Department arrived at the home, [Respondent-Mother] was unsupervised, which was a violation of her safety plan. At that time, a non-secure petition was filed.

33. The Department was unsuccessful with maintaining contact with [Respondent-Father] during the life of this case, however, he was aware of the situation and the Department's involvement, due to his participation in the [CFT] Meetings. The Department never had a face-to-face meeting with [Respondent-Father]. [Respondent-Father] was aware of the safety plan as well as the fact that the children were not attending doctor's appointments.

34. [Ms.] Mitchell, an [IFT] Specialist, employed by Coastal Horizons received a referral for this family from the department on November 14, 2018. The needs identified were substance abuse and parenting skills. Ms. Mitchell met with [Respondent-Mother] and the children on November 15, 2018 and initiated services at that time.



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[Respondent-Mother] said that substance abuse was not an issue, and that she had prescriptions for her medications. During the CFT meeting on November 15<sup>th</sup>[,] she was nodding off and not engaged in the meeting. She appeared to be over-medicated.

...

36. Ms. Mitchell attempted on numerous occasions to transport [Respondent-Mother] to her [CCA]; however, [Respondent-Mother] did not ever complete the assessment.

...

42. Ms. Mitchell did not have an occasion to meet [Respondent-Father] face to face.

43. Ms. Mitchell completed forty hours of services with the family over five weeks' time. She provided a Certificate of Completion because [Respondent-Mother] had completed the requisite number of hours for the program. Although Ms. Mitchell addressed all of the needs of the family, there were goals that were not met during the time Ms. Mitchell worked with the family.

44. [Respondent-Mother] did not complete a [CCA], she did not take the children . . . for well checks, and she did not make an appointment with a cardiologist regarding her heart condition, during the time the Family Preservations worker was involved.

45. [Respondent-Mother] . . . stated that it was past time for [ ] [Michael] and [Quincy] to see a dentist [for the first time].

...

47. [Respondent-Father] worked as a head superintendant with a demolition crew. This is a regional position, so he primarily works out of town. He has been with his current employer for six years.

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The trial court thus found that Respondent-Mother was the children's primary caretaker, and that Respondent-Mother failed to comply with DSS's requirements that she submit to random drug screens; that she comply with a CCA; and that Respondents comply with the supervision safety plan. The court also found that Respondent-Mother refused DSS entry to the home and access to the children, that the children at times reported going without meals or that Quincy prepared meals for his younger siblings, that Respondent-Mother at times locked herself in her bedroom or bathroom and would not respond to the children; that she appeared over-medicated and slurred her speech at a home visit; that the children had not ever been to the dentist prior to DSS involvement, resulting in Amber's needing significant dental work; and that Michael's ADHD was not being adequately managed. These findings support a conclusion that the children lived in an environment injurious to their welfare and that they were at a substantial risk of physical, mental, or emotional impairment. *See* N.C. Gen. Stat. § 7B-101(15) (2019); *In re H.D.F.*, 197 N.C. App. at 489-90, 677 S.E.2d at 883 (affirming neglect adjudication because of truancy, lack of cooperation with social workers, drug dependency, and lack of preventive medical care). We therefore affirm the trial court's adjudication of neglect.

C. Disposition

Respondent-Father argues that the trial court abused its discretion in ordering that he comply with the Family Services Case Plan, which includes substance abuse

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treatment and mental health evaluation, because, according to Respondent-Father, “DSS has no concerns with [Respondent-Father]’s mental health or sobriety.” We conclude that the trial court did not abuse its discretion in requiring that Respondent-Father comply with DSS’s case plan. The trial court entered the following unchallenged findings of fact in the disposition order:

9. Out-of-Home Family Services Agreements were executed by [Respondents] on February 15, 2019 in the presence of the assigned social worker who had an opportunity to explain the terms of the plan and to provide information to assist the parents in securing the recommended services. The plan addresses substance abuse, emotional and mental health[,] and parenting skills.

10. . . . [Respondents] have not participated in any drug screens other than the two screens that were ordered by the Court at previous court hearings. The first drug test resulted in both parents testing positive for methamphetamine. . . .

11. On April 30, 2019[,] there was a 911 call made regarding a domestic issue at [Respondents]’ home. [Respondent-Father] allegedly assaulted [Respondent-Mother] with a picture frame and punched her in the nose. The parents have not reported any domestic violence concerns to the Department.

12. That legal custody of the juveniles cannot be returned to the parents today as it is contrary to the juveniles’ health and safety[;] however[,] it may be possible within the next six months, provided their parents are able to satisfactorily complete the requirements of the Family Services Case Plan and demonstrate an ability to provide proper care for the children.

13. That it is in the best interests of the juveniles to provide for their health and safety that their legal and

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physical custody continue with [DSS] with placement in its discretion.

14. The Court advised [Respondents] to cooperate with their case plan and that a failure to do so may result in an order of the court in a subsequent permanency planning hearing that reunification efforts may cease.

Under N.C. Gen. Stat. § 7B-904(d1)(3), a trial judge has the authority to require the parent of a juvenile who has been adjudicated to be abused, neglected, or dependent to “[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile’s adjudication or to the court’s decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker.” N.C. Gen. Stat. § 7B-904(d1)(3) (2019). While a trial judge’s authority to adopt a case plan is not “unlimited[,]” our Supreme Court has determined that “the relevant statutory provisions appear to contemplate an ongoing examination of the circumstances that surrounded the juvenile’s removal from the home and the steps that need to be taken in order to remediate both the direct and the indirect underlying causes of the juvenile’s removal from the parental home[.]” *In re B.O.A.*, 372 N.C. 372, 381-82, 831 S.E.2d 305, 312 (2019).

Here, the trial court found that, after the children were removed from Respondents’ home, Respondents “have not participated in any drug screens other than the two screens that were ordered by the Court at previous court hearings. The first drug test resulted in both parents testing positive for methamphetamine.” This finding is unchallenged and therefore binding on appeal. *See In re T.H.*, 232 N.C.

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App. at 23, 753 S.E.2d at 212-13. Respondent-Father also does not challenge the trial court's finding of an alleged assault by Respondent-Father against Respondent-Mother at Respondents' home. In adjudicating the children neglected, the trial court cited substance abuse, failure to comply with the case plan, and lack of cooperation by Respondent-Father as issues related to the children's removal. We therefore conclude that the trial court did not abuse its discretion in ordering Respondent-Father, in addition to Respondent-Mother, to comply with DSS's case plan.

IV. Conclusion

We affirm the trial court's adjudication of Quincy, Michael, Amber, and Andy as neglected juveniles because the children lived in an environment injurious to their welfare that posed a substantial risk of harm to them. We also affirm the trial court's order that Respondent-Father comply with the Family Services Case Plan.

AFFIRMED.

Judges ZACHARY and BERGER concur.

Report per Rule 30(e).