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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-25

Filed: 15 December 2020

McDowell County, Nos. 19JA27, 28

IN THE MATTER OF: J.B. and P.M., Minor Children

Appeal by respondent-mother from order filed 13 September 2019 by Judge Ali Paksoy Jr. in District Court, McDowell County. Heard in the Court of Appeals 3 November 2020.

Aaron G. Walker, for petitioner-appellee McDowell County Department of Social Services.

Jacky L. Brammer, for respondent-appellant-mother.

Matthew D. Wunsche, for guardian ad litem.

STROUD, Judge.

Respondent-mother appeals an order adjudicating her children as neglected and limiting her to supervised visitation. Because there was sufficient evidence and findings to support an adjudication of neglect, we affirm the adjudication portion of the order. However, due to a lack of clarity regarding respondent-mother's visitation, we remand the dispositional portion of the order. We affirm in part and remand in part.

I. Background

On 13 March 2019, the McDowell County Department of Social Services (“DSS”) filed juvenile petitions alleging James¹ and Pam were neglected juveniles. The petition alleged that in February of 2019 there was a domestic violence altercation between respondent-mother and her boyfriend when the children were present. James heard respondent-mother being hit and called law enforcement. The day after the incident, Pam refused to get on the school bus to return home because respondent-mother’s boyfriend had threatened to hit her.

Respondent-mother admitted to DSS that her boyfriend hits her; both children stated their mother’s boyfriend had hit her before and they were afraid of him. DSS made a plan with respondent-mother for the boyfriend to leave the residence, but he refused. After speaking with law enforcement, respondent-mother’s boyfriend agreed to leave, but shortly thereafter he returned to the home and stayed. When DSS went to inquire why the children were not in school, they were home alone with respondent-mother’s boyfriend.

The trial court granted DSS nonsecure custody. After a hearing in August of 2019, on 13 September 2019, the district court entered an order, adjudicating James and Pam as neglected juveniles and setting the plan as reunification with the children

¹ Pseudonyms are used.

continuing in the custody of DSS. Respondent-mother was to have limited visitation which we discuss specifically later in this opinion. Respondent-mother appeals.

II. Standard of Review

We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are supported by clear and convincing competent evidence and whether the court's findings support its conclusions of law. The clear and convincing standard is greater than the preponderance of the evidence standard required in most civil cases. Clear and convincing evidence is evidence which should fully convince. Whether a child is dependent is a conclusion of law, and we review a trial court's conclusions of law de novo.

In re M.H., ___ N.C. App. ___, ___, 845 S.E.2d 908, 911 (2020) (citations and quotation marks omitted). “We review a dispositional order only for abuse of discretion. An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *Matter of S.G.*, ___ N.C. App. ___, ___, 835 S.E.2d 479, 486 (2019) (citation and quotation marks omitted).

III. Neglect

Respondent-mother contends that the trial court erred in determining the children were neglected because they “were not at a substantial risk of harm from a single domestic incident in another room or from [respondent-mother’s] boyfriend showing up twice at [her] residence in two weeks.” Respondent-mother does not challenge the findings of fact as unsupported by the evidence, but instead contends they are not sufficient to establish neglect. The unchallenged findings of fact are

binding on appeal. *See In re J.M.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006) (“If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court.” (citation and quotation marks omitted)).

A neglected juvenile is one “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).²

This Court has consistently required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline. . . . It is well-established that the trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home. Severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile may include alcohol or substance abuse by the parent, driving while impaired with a child as a passenger, or physical abuse or injury to a child inflicted by the parent. *Other conduct that supports a conclusion that a child is neglected includes exposing the child to acts of domestic violence, abuse of illegal substances, and threatening or abusive behavior toward social workers and police officers in the presence of the children.*

² North Carolina General Statute was amended between February and March of 2019 and has been amended since, but the changes do not affect our interpretation of the whether the children are neglected juveniles. *See generally* N.C. Gen. Stat. §7B-101 (2019).

In re D.B.J., 197 N.C. App. 752, 755, 678 S.E.2d 778, 780–81 (2009) (emphasis added) (citations, quotation marks, and brackets omitted).

The trial court found that both children were present for a domestic violence altercation where they “heard objects thrown” and “loud yelling” from respondent-mother’s room. Pam became anxious, and James called their maternal grandmother who instructed James to call law enforcement. “Both children were very upset and concerned for their mother.” James heard respondent-mother “being slapped” and both children saw her with scratches under her eye and on her lip.

The next day, Pam told DSS she was afraid to come home from school and respondent-mother entered into a safety plan with DSS wherein her boyfriend would leave the home and not have contact with the children. Respondent-mother also informed DSS about prior altercations with her boyfriend and has seen her boyfriend attack “officials in court and knows that he has a violent temper.” But respondent-mother’s boyfriend was at the house twice “within two weeks of the safety plan[,]” and he informed DSS he would not abide by the plan. Thereafter, DSS went to the home to find out why James was not in school and found he and Pam home alone with respondent-mother’s boyfriend.

A. Domestic Violence

Respondent-mother contends that “one domestic incident” was not enough to determine her children were neglected, particularly given the fact that the children

were not in the same room and law enforcement officers did not arrest anyone or remove the children. We first note that children need not be in the same room to be exposed to domestic violence – hearing objects being thrown, yelling, and your mother being slapped, and thereafter, seeing your mother wounded from the altercation are all forms of exposure to domestic violence that do not require children to be in the same room when the altercation is taking place. Further, we are not concerned with any potential *criminal* aspect of the alleged domestic violence, as the trial court found the children were exposed to domestic violence to a level that one child called law enforcement and the other was frightened to return home. Respondent-mother and the children also told DSS there had been prior altercations. Thereafter, respondent-mother disregarded the safety plan and her boyfriend indicated he would not comply with the plan for the safety of the children. The trial court properly concluded the children were neglected juveniles not because of “one domestic incident” but because of a consistent and continuing failure to address the issues that lead to the children’s exposure to domestic violence and the subsequent trauma this exposure actually caused for the children. This argument is overruled.

B. Timing of Petition

Respondent-mother next contends that the day James missed school, he was home with a broken leg and because only then did DSS file its juvenile petition, DSS must have filed the petition based on the broken leg although respondent-mother’s

boyfriend had nothing to do with the injury. However, the district court did not find or even indicate respondent-mother's boyfriend had anything to do with James's broken leg. Respondent-mother fails to note that the time between when DSS first got involved with the family and when petitions were filed was approximately two weeks; in that time, respondent-mother's boyfriend had violated the safety plan on at least three occasions and had indicated that he would not comply. The timing of the petition is not relevant to the inquiry of neglect, but here it is clear that DSS filed the petition because respondent-mother and her boyfriend refused to take steps for the safety of the children. This argument is without merit.

IV. Disposition

Respondent-mother also contends the trial court erred because “[t]he dispositional portion of the order contains numerous errors, contradictory provisions, and arbitrary decisions that are unsupported by the evidence. DSS did not make reasonable efforts, and the trial court abused its discretion.” Among the many issues respondent-mother notes the most concerning is the differing determinations regarding visitation as the trial court concluded “[t]he respondents should have one hour weekly supervised visitation with the children as arranged by DSS[;]” then on the next page decreed “[t]hat the respondent mother shall have supervised visitation with the children for a minimum of two hours every other week” with differing provisions for the respective respondent-fathers.

Citing no law, DSS contends that the visitation determinations in the “conclusions” section are “simply clerical and typographical” errors that should be disregarded. The guardian *ad litem* (“GAL”) acknowledges in its brief there are inconsistencies in the order between the conclusions of law and the trial court’s decree. The GAL, like respondent-mother, requests we remand the visitation portion of the dispositional order and contends “[b]ecause the order should be remanded for clarification regarding respondent mother’s visitation, it is premature to address her other visitation argument, that her visits were reduced without adequate findings that DSS made reasonable efforts toward reunification.” We agree with respondent-mother and the GAL.

Due to the confusing provisions of the order regarding visitation, we remand the dispositional portion of the order for the trial court to make additional findings or conclusions as needed regarding visitation and to enter provisions in the decree clarifying visitation for all respondents. We decline to address respondent-mother’s other arguments regarding disposition, and respondent-mother may appeal the new order regarding disposition entered by the trial court for any errors she contends arise under that order.

V. Conclusion

Because there was sufficient evidence and findings to support an adjudication of neglect, we affirm the adjudication portion of the order. However, due to a lack of

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clarity in the order regarding respondent-mother's visitation, we reverse this portion of the order and remand the dispositional portion of the order for entry of a new order.

Accordingly, we affirm in part and reverse and remand in part.

AFFIRMED in part and REMANDED in part.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).