

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-271

Filed: 31 December 2020

Cumberland County, No. 19 JA 211

IN THE MATTER OF: K.S.

Appeal by respondent-mother, and cross-appeal by petitioner Cumberland County Department of Social Services, from order entered 14 January 2020 by Judge Luis J. Olivera in Cumberland County District Court. Heard in the Court of Appeals 17 November 2020.

James D. Dill for petitioner-appellee/cross-appellant Cumberland County Department of Social Services.

Administrative Office of the Courts, by GAL Staff Counsel Michelle FormyDuval Lynch, for appellee guardian ad litem.

J. Thomas Diepenbrock for respondent-appellant/cross-appellee mother.

ZACHARY, Judge.

Respondent Kayla Jeffcoat (“Mother”) appeals from an order adjudicating her newborn child, Kelly,¹ to be a dependent juvenile. Cumberland County Department

¹ The pseudonym adopted by the parties is used for ease of reading and to protect the juvenile’s identity.

of Social Services (“DSS”) cross-appeals from the same order dismissing DSS’s neglect claim. Upon review, we reverse the trial court’s adjudication of Kelly as a dependent juvenile, and remand for further findings of fact. We affirm the trial court’s dismissal of DSS’s neglect claim.

Background

On 26 May 2019, Kelly was born to Mother and Respondent Oree Shipman (“Father”). Three days later, DSS filed a juvenile petition alleging that Kelly was a neglected and dependent juvenile. The trial court awarded nonsecure custody of Kelly to DSS, and appointed a guardian *ad litem* (“GAL”) for Kelly. On 4 October 2019, DSS filed an amended juvenile petition with additional factual allegations, again alleging Kelly to be neglected and dependent.

The trial court ordered the parties and their attorneys to attend a pretrial judicial settlement conference, scheduled for 10 October 2019. It does not appear from the record as though Father attended the judicial settlement conference.

Thereafter, DSS, Mother, the GAL, and their attorneys executed a Stipulation Agreement and Written Agreement for Consent Adjudication Order Per 7B-801(b1) (“Stipulation Agreement”), in which the parties agreed that certain “allegations as set forth in the amended petition were true and accurate . . . at the time of the filing of the amended petition[.]” Mother reserved the right to argue at the adjudication hearing that these facts were not sufficient to establish Kelly’s dependency or neglect.

Opinion of the Court

On 14 November 2019, the matter came on for an adjudication and disposition hearing in Cumberland County District Court before the Honorable Luis J. Olivera. DSS, the GAL, Mother, and their attorneys attended the hearing; Father did not. Father's counsel reported to the trial court that Father went to Florida after his probation ended on 15 July 2019, where he was homeless and with no means of returning to this state. The trial court permitted Father's counsel to withdraw.

At the hearing, DSS submitted the Stipulation Agreement to the court, and the stipulations were "assented to by all parties present." The stipulated facts, as incorporated into the trial court's order, were as follows:

1. The Cumberland County Department of Social Services (CCDSS) received a Child Protective Services (CPS) referral on 05/27/2019 concerning the safety of the juvenile.
2. Respondent Mother, Kayla Jeffcoat named Respondent Father Oree Shipman as the child's biological father. Respondent Father Oree Shipman signed the Affidavit of Paternity as to the juvenile and his name appears on the juvenile's birth certificate.
3. Respondent Mother and Respondent Father Shipman have two older children who are currently in the custody of CCDSS (16 JA 493 and 17 JA 530). Further, the Respondents have an older child that was placed in the legal and physical custody of a relative (15 JA 121)[.]
4. The oldest child (15 JA 121) was adjudicated abused and neglected on 2/1/16 based on Respondent Father Shipman physically abusing the child and the child having sustained severe injuries. The child was approximately three months old when the abuse occurred. Respondent Father Shipman pled guilty and was convicted of felony child abuse.

Opinion of the Court

(Cumberland County District Court, Juvenile Division, 15 JA 121)[.]

5. On 1/18/17, the juvenile K.S. (16 JA 493), a sibling of this juvenile and a child of Respondent Mother and Respondent Father Shipman was adjudicated dependent, and on 5/10/18, the juvenile K.S. (17 JA 530), a sibling of this juvenile and another child of Respondent Mother and Respondent Father Shipman was adjudicated neglected. These adjudications were based on the adjudication of the older child in 15 JA 121 and the Respondents had not alleviated the conditions for which that child was removed from their care. At the time of said adjudications, Respondent Mother and Respondent Father continued to be involved in a relationship with each other. (Cumberland County District Court, Juvenile Division, 16 JA 493 and 17 JA 530).

10. At the time of the filing of the original petition in this matter, Respondent Mother and Respondent Father Shipman did not have essential necessities for the child [Kelly].

12. On June 15, 2019, Respondent Mother and Respondent Father were involved in a verbal and physical altercation with each other in the presence of the juvenile A.S. (15 JA 121) when the Respondent Mother drove the Respondent Father and the juvenile A.S. in a vehicle. Respondent Mother hit Respondent Father Shipman and Respondent Father Shipman hit Respondent Mother. In addition, Respondent Father Shipman physically choked the Respondent Mother after grabbing her. Respondent Mother knew Respondent Father was not allowed around A.S. when Respondent Mother allowed Respondent Father into the vehicle with A.S. (15 JA 121).

13. The June 15, 2019 altercation occurred as a result of Respondent Father telling the juvenile A.S. that he would bite A.S. back after A.S. bit him, Respondent Mother taking Respondent Father's statement seriously,

Opinion of the Court

Respondent Mother hitting Respondent Father, Respondent Mother beginning to drive like a maniac with A.S. in the vehicle, and Respondent Father trying to grab Respondent Mother.

14. Pursuant to the last order of the Court in 15 JA 121, Respondent Father Shipman was not allowed any contact with the juvenile A.S. (15 JA 121) and that remained the order of the Court at the time of the June 15, 2019 incident.

15. An altercation did in fact occur in June 2019 between Respondent Mother and Respondent Father when Respondent Mother picked Respondent Father up after Respondent Father demanded a car ride.

In the Stipulation Agreement, Mother, DSS, and the GAL also agreed to the “[i]ssue[s] that led to [r]emoval: current and prior CPS history, Respondent Father’s conviction for Felony Child Abuse as to this juvenile’s sibling, [A.S.] (Docket No. 15 JA 121), unstable housing, and domestic violence issues between Respondent Mother and Respondent Father.”

The trial court accepted the Stipulation Agreement, and found that “[t]he facts as admitted to by the parties[would] constitute[] the factual basis for this adjudication.” The parties offered no additional evidence in the adjudication hearing.

After hearing the arguments of counsel as to whether the stipulated facts were sufficient to support an adjudication of dependency or neglect, the trial court concluded that Kelly was a dependent juvenile. The trial further dismissed the claim of neglect. The trial court then held the dispositional hearing, and at its conclusion, ordered that Kelly remain in the nonsecure custody of DSS. On 14 January 2020, the

trial court entered its adjudication and disposition order memorializing its findings and conclusions.

On 24 January 2020, Mother gave timely notice of appeal. On 30 January 2020, DSS gave notice of its cross-appeal. Father did not appeal the trial court's adjudication and disposition order.

Discussion

Mother challenges the trial court's adjudication of Kelly as a dependent juvenile, and DSS challenges the trial court's dismissal of the neglect claim. We address the parties' arguments in turn.

I. Standard of Review

We review a trial court's adjudication of dependency and neglect under N.C. Gen. Stat. § 7B-807 (2019) "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 B.P.*, 257 N.C. App. 424, 428, 809 S.E.2d 914, 916 (2018) (citation and internal quotation marks omitted). Conclusions of law are reviewed de novo. *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015).

"The trial court must find the ultimate facts essential to support the conclusions of law. Evidentiary facts are those subsidiary facts required to prove the ultimate facts. Ultimate facts are the final resulting effect reached by processes of

logical reasoning from the evidentiary facts.” *In re H.J.A.*, 223 N.C. App. 413, 418, 735 S.E.2d 359, 363 (2012) (citations and internal quotation marks omitted).

II. Mother’s Appeal

A. The Stipulation Agreement

In its order, the trial court found that “the parties . . . agreed to enter into a Consent Adjudication Agreement” pursuant to N.C. Gen. Stat. § 7B-801(b1). Mother contends that the Stipulation Agreement was not a consent order under section 7B-801(b1), but rather a stipulation by the parties to certain facts as permitted by section 7B-807(a).

“A consent adjudication is the agreement of the parties, their decree, entered upon the record with the sanction of the court.” *In re R.L.G.*, 260 N.C. App. 70, 73, 816 S.E.2d 914, 917 (2018) (citation and internal quotation marks omitted). Section 7B-801(b1) provides that such an order may be entered if “(1) All parties are present or represented by counsel, who is present and authorized to consent[;] (2) [t]he juvenile is represented by counsel[; and] (3) [t]he court makes sufficient findings of fact.” N.C. Gen. Stat. § 7B-801(b1)(1)–(3).

“[A] different statute—N.C. Gen. Stat. § 7B-807—allows factual stipulations made by a party to be used in support of an adjudication.” *R.L.G.*, 260 N.C. App. at 73, 816 S.E.2d at 917. Section 7B-807(a) provides:

If the court finds from the evidence, including stipulations by a party, that the allegations in the petition have been

proven by clear and convincing evidence, the court shall so state. *A record of specific stipulated adjudicatory facts shall be made by either reducing the facts to a writing, signed by each party stipulating to them and submitted to the court; or by reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.*

N.C. Gen. Stat. § 7B-807(a) (emphasis added).

In the instant case, the Stipulation Agreement did not constitute a valid consent adjudication pursuant to section 7B-801(b1). First, the Stipulation Agreement did not include any “findings stating that the parties had . . . consented to [Kelly] being adjudicated as neglected [or] dependent.” *In re K.P.*, 249 N.C. App. 620, 626, 790 S.E.2d 744, 749 (2016). Indeed, the Stipulation Agreement explicitly provided that Kelly’s “[c]ondition [was] to be argued before the [c]ourt”; counsel for DSS additionally informed the trial court upon presentation of the Stipulation Agreement that Mother reserved “the right to make argument as to whether or not [the stipulated facts constituted] a sufficient basis for neglect or dependency,” which Mother’s counsel confirmed.

Accordingly, the Stipulation Agreement “simply contained a stipulation by the parties as to certain facts,” and did not constitute a consent adjudication order. *R.L.G.*, 260 N.C. App. at 74, 816 S.E.2d at 917.

B. The Dependency Adjudication

Mother contends that the facts contained in the Stipulation Agreement, as the sole evidentiary basis for the trial court’s adjudication, were insufficient to support

the conclusion that Kelly was a dependent juvenile pursuant to section 7B-101(9). We agree.

A “dependent juvenile” is defined, in pertinent part, as “[a] juvenile in need of assistance or placement because . . . 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). “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).

In finding of fact 7, the trial court expressly stated that “[t]he facts as admitted to by the parties . . . constitute[] the factual basis for this adjudication.” The trial court incorporated the stipulated facts as the evidentiary findings of fact in its adjudication order. We will therefore evaluate the validity of the trial court’s determination that Kelly was a dependent juvenile as defined in section 7B-101(9) based on the information contained in these findings of fact.

Here, based upon the Stipulation Agreement, the trial court found, in pertinent part, that “[a]t the time of the filing of the original petition in this matter, Respondent Mother and Respondent Father Shipman did not have essential necessities for the child [Kelly].” The trial court subsequently concluded that:

the evidence presented rises to the level of dependency pursuant to N.C. Gen[.] Stat. § 7B-101(9) in that the

Opinion of the Court

juvenile's parents, guardians, or custodians were unable to provide for the care or supervision of the juvenile and they lacked an appropriate alternative child care arrangement at the time of the filing of the amended Petition.

Although the trial court made an ultimate finding of fact based on “the evidence presented” that Mother and Father “lacked an appropriate alternative child care arrangement at the time of the filing of the Petition,” there was no evidence to support such a finding. The only evidence presented at the adjudication hearing—the facts contained in the Stipulation Agreement—makes no reference to the availability of alternative child care arrangements. Thus, the trial court's findings are inadequate, and cannot support the trial court's conclusion that Kelly was a dependent juvenile.

In addition, there is no merit to the argument that the testimony received by the trial court, together with the DSS and GAL reports that were admitted into evidence, supports the trial court's finding that Mother and Father lacked an appropriate alternative child care arrangement. This evidence was received *at the disposition hearing*, rather than at the adjudication hearing. *Cf. In re A.W.*, 164 N.C. App. 593, 597, 596 S.E.2d 294, 296–97 (2004) (“[T]his report was not introduced into evidence during the brief adjudicatory phase of the hearing. A trial court may not find as fact that which was not presented as evidence at trial.”). Thus, this evidence cannot support the trial court's adjudication that Kelly was dependent.

During the adjudicatory phase, “[t]he petitioner has the burden of proving by clear and convincing evidence that a child is dependent.” *V.B.*, 239 N.C. App. at 341–42, 768 S.E.2d at 868 (citation and internal quotation marks omitted); *accord In re H.M.*, 182 N.C. App. 308, 315, 641 S.E.2d 715, 718 (2007) (citation and internal quotation marks omitted). Proving that Kelly was a dependent juvenile was DSS’s burden to bear. However, DSS did not offer any evidence at the adjudication hearing, but instead relied solely on the facts contained in the Stipulation Agreement. Upon review of these stipulated facts, which did not address whether Mother lacked an appropriate alternative child care arrangement, it is apparent that there was insufficient evidence to support the trial court’s determination that Kelly was a dependent juvenile.

Accordingly, the trial court erred in adjudicating Kelly to be dependent, and we reverse and remand for additional findings of fact. *B.M.*, 183 N.C. App. at 90, 643 S.E.2d at 648. Because we must reverse and remand this matter to the trial court, we do not address respondent’s remaining arguments on appeal. *Id.*

III. DSS’s Cross-Appeal: Neglect Adjudication

DSS argues that the trial court erred *as a matter of law* by failing to conclude that Kelly was a neglected juvenile. We disagree.

In support of its argument, DSS asserts that the trial court’s evidentiary findings of fact—that Mother and Father have a history with child protective services

prior to Kelly’s birth, with three older children having been removed from their care; that since Kelly’s birth, Mother allowed Father to be in the presence of one of Kelly’s siblings in violation of a court order, and Mother and Father engaged in an altercation in the presence of that sibling; and that Mother and Father did “not hav[e] essential necessities for Kelly in May 2019”—supported an adjudication that Kelly was a neglected juvenile. The GAL wholly adopts this argument.

As the trial court noted, “[t]he facts as admitted to by the parties . . . constitute[] the factual basis for this adjudication.” Thus, the parties do not challenge the evidentiary underpinnings of these findings of fact, but rather the legal import of these findings.

The Juvenile Code defines a “neglected juvenile,” in pertinent part, as one who does not receive “proper care, supervision, or discipline” from the juvenile’s parent, or “who lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15). “In addition, this Court has 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 in order to adjudicate a juvenile neglected.” *In re E.P.*, 183 N.C. App. 301, 307, 645 S.E.2d 772, 775 (citation and internal quotation marks omitted), *aff’d per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007). “In neglect cases involving newborns, the decision of the trial court must of necessity be predictive in nature, as the trial court

must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698–99 (2019) (citation and internal quotation marks omitted).

It is well established that “evidence of abuse of another child in the home is relevant in determining whether a child is a neglected juvenile.” *In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994). However, evidence of prior abuse “standing alone . . . is not sufficient to support an adjudication of neglect.” *In re K.L.*, ___ N.C. App. ___, ___, 845 S.E.2d 182, 197 (2020) (citation omitted). “Instead, we require the presence of other factors to suggest that the neglect or abuse will be repeated.” *J.A.M.*, 372 N.C. at 9–10, 822 S.E.2d at 699 (citation and internal quotation marks omitted).

In the present case, evidence of the other siblings’ prior adjudications was “a relevant factor in determining whether [Kelly] was a neglected juvenile.” *Nicholson*, 114 N.C. App. at 94, 440 S.E.2d at 854. It is undisputed that Kelly’s siblings were removed from the home as a result of being adjudicated abused, neglected, or dependent. Nonetheless, section 7B-101(15) “neither dictates how much weight should be given to a prior neglect adjudication, nor suggests that a prior adjudication is determinative.” *In re A.K.*, 360 N.C. 449, 456, 628 S.E.2d 753, 757 (2006). The weight given to such evidence is left to the discretion of the trial court. *In re C.G.R.*,

216 N.C. App. 351, 361, 717 S.E.2d 50, 56 (2011), *disc. review denied*, 365 N.C. 573, 724 S.E.2d 533 (2012).

The presence of domestic violence is another relevant factor for the trial court's consideration in making a neglect determination. *See K.L.*, ___ N.C. App. at ___, 845 S.E.2d at 197 ("Other factors that suggest that the neglect or abuse will be repeated include the presence of domestic violence in the home and current and ongoing substance abuse issues . . ."). However, the stipulated facts regarding a verbal and physical altercation between Mother and Father in June of 2019—in the presence of one of Kelly's siblings and thus in violation of a court order—did not, as a matter of law, *compel* a conclusion that Kelly was neglected, particularly in light of the fact that Father had removed himself to Florida. Thus, the altercation between Mother and Father—although certainly an important factor for the trial court's consideration—was not dispositive.

This Court has affirmed challenges to a trial court's failure to adjudicate a juvenile as neglected where the trial court received no competent evidence to support an adjudication of neglect, *see E.P.*, 183 N.C. App. at 307, 645 S.E.2d at 775–76, or where the evidence presented was conflicting, *see H.M.*, 182 N.C. App. at 312–13, 641 S.E.2d at 717–18; *In re Ellis*, 135 N.C. App. 338, 343, 520 S.E.2d 118, 121–22 (1999); *Nicholson*, 114 N.C. App. at 92–94, 440 S.E.2d at 853–54. While another judge may have adjudicated Kelly as neglected based on the stipulated facts of the instant case,

it is axiomatic that “appellate courts may not reweigh the underlying evidence presented at trial.” *J.A.M.*, 372 N.C. at 11, 822 S.E.2d at 700.

Here, DSS has specifically argued on appeal that “the findings in the stipulation are adequate to support a conclusion of law that Kelly was a neglected juvenile at the time of the filing of the amended petition.” DSS is correct to the extent that the findings *might* support a conclusion of neglect; nevertheless, the findings do not *compel* such a conclusion, given the discretion we afford the trial courts in making such a determination. In other words, we cannot say *as a matter of law* that the trial court erred by failing to conclude that Kelly was a neglected juvenile. *See id.*

Accordingly, we conclude that the trial court did not err in dismissing DSS’s neglect claim, and DSS’s arguments to the contrary are overruled.

Conclusion

For the reasons stated herein, we reverse the trial court’s adjudication of Kelly as a dependent juvenile, and remand for further findings of fact. The trial court may, in its discretion, receive additional evidence on remand. We affirm the remainder of the trial court’s order.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).