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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-367

No. COA20-913

Filed 20 July 2021

Chatham County, No. 19 JA 115

IN THE MATTER OF: L.R.M.

Appeal by Respondent-mother from order entered 28 July 2020 by Judge Joseph Moody Buckner in Chatham County District Court. Heard in the Court of Appeals 27 April 2021.

Angenette Stephenson, for Petitioner-Appellee Chatham County Department of Social Services.

Freedman Thompson Witt Ceberio & Byrd PLLC, by Christopher M. Watford, for Respondent-Appellant mother.

Matthew D. Wunsche for Guardian ad Litem.

GORE, Judge.

¶ 1

Respondent-mother appeals from a trial court's order adjudicating Landon¹ as a neglected juvenile. On appeal, she argues that the trial court's conclusion that Landon was neglected was not supported by the evidentiary stipulations, which

¹ Pursuant to N.C.R. App. P. 42(b), pseudonyms are used to protect the identity of the juveniles.

composed the entire factual record for purposes of the hearing on adjudication. Specifically, she contends that: (1) the trial court's ultimate findings of fact in paragraphs 28, 29, 30, and 32 are in fact conclusions of law subject to *de novo* review; (2) those findings are not supported by the evidentiary record; and (3) the trial court's overall conclusion of law that Landon is a neglected juvenile is not supported by the evidence and should be reversed. While that the factual stipulations alone do not clearly and convincingly support the contested findings, we affirm the trial court's overall conclusion that Landon was a neglected juvenile.

I. Factual and Procedural Background

¶ 2

In December of 2019, Respondent-mother lived in Siler City, North Carolina, with her six-year-old son Landon, three-year-old son Ethan, and her boyfriend Judson Dunnivant ("Respondent caretaker").² Before moving to Siler City, Respondent-mother had met Respondent caretaker in May of 2019, and had asked the juveniles' biological father Alex Marrero ("Respondent-father") to move out in July of 2019. Respondent caretaker moved into the home two weeks later and became the primary caretaker of the juveniles while Respondent-mother worked.

¶ 3

Early in the morning on 10 December 2019, Ethan died from bleeding in his abdominal cavity caused by blunt force trauma to his abdomen. Landon shared a

² After adjudication, the trial court removed Respondent caretaker as a party to this action.

bedroom with Ethan and was present when his brother died. Respondent caretaker found Ethan laying unresponsive in his bed around 4:00 a.m. and called 911. While on the call with 911, Respondent caretaker reported to the operator that Ethan was “not alive.” He described Ethan as “stiff” and performed CPR on the body. Ethan’s cause of death was later ruled a homicide.

¶ 4 Shortly thereafter, Chatham County Department of Social Services (“CCDSS”) received a CPS report that police and EMS were on the scene with an unresponsive child who was presumed dead. Law enforcement indicated that there was noticeable bruising on Ethan’s body and maltreatment was suspected. When CCDSS investigative social worker Liz Anderson responded to the police report and arrived on the scene, the police had already sealed off the home with tape and no one else could enter. Landon had been sitting in a car outside with Respondent caretaker while Respondent-mother had gone to the hospital with Ethan’s body.

¶ 5 In the preceding twenty-four-hours before Ethan died, Respondent-mother, Respondent caretaker, and Landon were the only people around him. Respondent caretaker made comments to law enforcement that Landon, who was in ear shot at the time, had been hitting Ethan. Two days later on 12 December 2019, Respondent-mother encouraged Respondent caretaker to tell CCDSS that Landon had told him, “I don’t know why I had to hit him, punch him, and kick [Ethan] in the stomach until he threw up.”

¶ 6 The family had previously been subject to a Wake County Human Services (“WCHS”) child protective services investigation the month before, which was based on sexual abuse allegations against Respondent-father. Allegations included spanking Landon, dragging him around by the leg, and throwing a chair at him. However, WCHS could not substantiate the allegations. Respondent-father had moved to New Jersey and no longer had contact with the family. He was not interviewed; the Child Medical Evaluation was inconclusive and indicated concern for possible coaching. When the family moved to Siler City, CCDSS made two home visits on behalf of WCHS, but did not indicate concerns about the family.

¶ 7 Respondent-mother had multiple hospitalizations for psychotic episodes going back to November of 2016. She has been diagnosed with schizophreniform disorder, schizophrenia, paranoid schizophrenia, cannabis abuse, depression, anxiety, post-traumatic stress disorder, schizoaffective disorder, and borderline traits. While she was prescribed Seroquel, Wellbutrin, and Lexapro, she has inconsistently taken her medications since 2017.

¶ 8 When Respondent-mother met Respondent caretaker, he moved in two weeks later and became the primary caretaker of the juveniles. In August of 2019, Landon told Respondent-father that Respondent caretaker was “mean” to him. Observable bruises appeared on Ethan shortly after Respondent caretaker moved in, but Respondent-mother blamed these bruises on Landon.

¶ 9 Following Ethan’s death, Respondent-mother allowed Landon to leave with CCDSS until a family member could pick him up. CCDSS explored safety resource options provided by Respondent-mother and developed a Safety Plan where Landon would reside with a relative in Holly Springs. An order for Nonsecure Custody was entered on 17 December 2019 with Landon remaining in kinship placement. Following an Order on Need for Continued Nonsecure Custody on 20 December 2019, Respondent-mother gave consent for Landon to receive mental health treatment and waived additional non-secure hearings pending a hearing on the petition.

¶ 10 On 13 February 2020, the trial court allowed CCDSS’s Motion to Continue and Leave to Amend Petition because CCDSS had not yet received the Medical Examiner’s reports and autopsy, the Child Medical Evaluation for the current child protective services assessment, or any law enforcement reports involving the investigation. On 19 February 2020, the trial court summarily denied Respondent-mother’s Pre-Trial Motion and Renewed Motion for Discovery. On 27 March 2020, Respondent-mother filed a Motion to Dismiss based on CCDSS’s failure to amend the petition. The trial court entered an Amended Order to Continue and Order for Leave to Amend Petition requiring CCDSS to serve an amended petition no later than 31 March 2020.

¶ 11 On 30 March 2020, CCDSS served an Amended Juvenile Petition reasserting its allegation that Landon is a neglected juvenile. On 17 June 2020, this case came

before the District Court for adjudication and disposition. Prior to the hearing, the parties engaged in extensive negotiations that resulted in three sets of factual stipulations. Due to restrictions placed on the trial court due to Covid-19, the parties agreed to resolve the adjudication by stipulation as to prevent further delay. Counsel for CCDSS reported to the trial court,

[w]e have been able to negotiate stipulations in that matter for the adjudication, and I've just filed those with Madam Clerk. And, Your Honor, we would like to have the evidence portion of the adjudication rest on those stipulations only.

¶ 12 The trial court received no additional evidence for the purposes of the adjudication. After hearing arguments for counsel, the trial court found that CCDSS met their burden on neglect. In moving to the disposition, CCDSS entered a number of documents into evidence and presented the testimony of social worker Liz Anderson and foster care supervisor Wilder Horner. Among those documents were SAFE Child Medical Evaluations for the juveniles, the transcript of the 911 call made by Respondent caretaker the morning of Ethan's death, photographs of Ethan's body, autopsy report, report of investigation by the Medical Examiner, and UNC Beacon Child Medical Evaluation for Landon. Respondents were not present for the disposition and the Respondents' attorneys offered no argument or evidence on their behalf.

¶ 13 On 28 July 2020, the trial court entered a Custody Order Disposition. Pursuant to that order, custody and placement authority remained with CCDSS, but CCDSS was required to continue reasonable reunification efforts. Respondent-mother was required to complete a psychiatric evaluation, comply with mental health treatment recommendations, complete parenting classes, and demonstrate housing stability.

¶ 14 Respondent-mother appeals from the Custody Order Disposition and underlying adjudication order.

II. Discussion

¶ 15 Pursuant to N.C. Gen. Stat. § 7B-807, “stipulations by a party” are evidence that can support findings of fact under the clear and convincing evidence standard. N. C. Gen. Stat. § 7B-807(a) (2020). “In North Carolina, stipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact.” *In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 9 (2013) (quotation marks and citations omitted). Findings of fact that are based on proper stipulations “are presumed to be supported by competent evidence and are binding on appeal.” *In re G.T.*, 250 N.C. App. 50, 52, 791 S.E.2d 274, 276 (2016) (citation omitted).

¶ 16 “A proper review of a trial court’s finding of neglect entails a determination of (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 Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citations omitted). “In a non-jury neglect adjudication, the trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (citations omitted). Findings of fact that are not specifically challenged “are binding on this Court on appeal.” *In re C.B.*, 180 N.C. App. 221, 223, 636 S.E.2d 336, 337 (2006) (citation omitted). “The trial court’s conclusions of law are reviewable *de novo*[.]” *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (quotation marks and citation omitted).

¶ 17 North Carolina General Statutes Section 7B-101(15) defines a “neglected juvenile” as a child:

whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile’s welfare[.] . . . In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2020).

¶ 18 “[T]his 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.’” *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (citations omitted). “Whether a child is ‘neglected’ is a conclusion of law which must be supported by adequate findings of fact.” *In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999) (citation omitted).

¶ 19 The record is silent as to any judicial notice of documents outside of the stipulations for purposes of the adjudication. As counsel for CCDSS stated to the trial court, “And, Your Honor, we would like to have the evidence portion of the adjudication rest on those stipulations only.” Moreover, the trial court indicated in the adjudication order that it made its findings of fact “based on stipulations by the parties.” While counsel for CCDSS advanced arguments contending that those stipulations support a conclusion of neglect, “it is axiomatic that the arguments of counsel are not evidence.” *Daly v. McKenzie*, 250 N.C. App. 611, 617, 795 S.E.2d 120, 124 (2016) (*purgandum*).

A. Contested Findings

¶ 20 Respondent-mother argues that the trial court’s “Ultimate Findings of Fact” in paragraphs 28, 29, 30, and 32 are conclusions of law and should be reviewed *de novo*.

As a general rule, . . . any determination requiring the

exercise of judgment or the application of legal principles is more properly classified a conclusion of law. Any determination reached through “logical reasoning from the evidentiary facts” is more properly classified a finding of fact. The determination of neglect requires the application of the legal principles set forth in [the statute] and is therefore a conclusion of law.

Helms, 127 N.C. App. at 510, 491 S.E.2d at 675-76 (internal citations omitted).

¶ 21

The contested findings read in pertinent part:

28. The Juvenile, [Landon], is Neglected pursuant to N.C.G.S. 7B-101(15) . . .

29. Specifically, the juvenile received improper care in that . . .

30. Specifically, the environment was injurious because . . .

32. The following factors suggest the juvenile presently faces substantial risk in his living environment if returned home and that the risk of repetition of neglect is high[.]

We agree that these findings are more properly characterized as conclusions of law.

Accordingly, we apply the appropriate *de novo* standard on review.

¶ 22

The trial court references instances of domestic violence in the home to support a conclusion that Landon is a neglected juvenile. “In determining whether a child is neglected, domestic violence in the home contributes to an injurious environment.” *In re J.W.*, 241 N.C. App. 44, 50, 772 S.E.2d 249, 254 (2015) (citation omitted). “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.” *In re T.S.*, 178 N.C.

App. 110, 113, 631 S.E.2d 19, 22 (2006) (citation omitted). “[C]onduct that supports a conclusion that a child is neglected includes exposing the child to acts of domestic violence[.]” *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 781 (2009).

¶ 23 The stipulations themselves, viewed in isolation, provide tenuous support for a finding of ongoing exposure to domestic violence at the hands of Respondent-father. While Respondent-mother stipulated to facts that indicate she was the victim of domestic violence at the hands of Respondent-father in the past, the stipulations also indicate that Respondent-mother expelled him from the home in July of 2019. Respondent-father moved to New Jersey and had no further contact with the family. Without additional evidence, it is difficult to determine whether the allegations against Respondent-father clearly and convincingly substantiate a finding that Landon faced a present safety risk in the home at the time he was removed from Respondent-mother’s custody.

¶ 24 Respondent-mother stipulated that Landon told Respondent father on the phone that Respondent caretaker was mean to him and his now deceased brother. Further, it was stipulated that Ethan began to exhibit observable bruises after Respondent caretaker moved in. Based on the stipulations alone, and without further evidence, it is difficult to determine what exactly Landon meant when he said Respondent caretaker was “mean” to him and his now deceased brother. Without additional context, “mean” could equally be indicative of violence as it could be a

failure of Respondent caretaker to acquiesce to a particular want or demand. Moreover, references to observable bruising that occurred after Respondent caretaker moved in is ambiguous. There is no indication as to the quantity, severity, or location of the observable bruises. While additional evidence that was presented at disposition could provide additional support and shed light on the specifics of these stipulations, no extrinsic documentation was considered at adjudication.

¶ 25 Respondent-mother stipulated that she had blamed Landon for the observable bruises on Ethan that only started to appear after Respondent caretaker moved in. Further, she stipulated to encouraging Respondent caretaker to tell CCDSS that Landon told them, “I don’t know why I had to hit him, punch him, and kick, [his deceased brother] in the stomach until he threw up.” The trial court determined that these stipulations clearly and convincingly supported a finding that Landon received improper care and faced substantial risk in his living environment. Again, evidence that could substantiate the adverse impact these statements had on Landon’s emotional wellbeing was present at disposition, but not adjudication. The stipulations alone do not clearly establish an emotional impact on Landon.

¶ 26 Respondent-mother stipulated to her extensive history of psychiatric treatment and multiple hospitalizations due to psychotic episodes that date back at least as far as 28 November 2006. The trial court found that Respondent-mother’s “insufficiently treated thought disorder created an injurious environment,” her “need

to be the bread winner and provide financially for the other three members of the household while suffering from a mental health disorder contributed to the injurious environment,” and “the juvenile presently faces substantial risk in his living environment” because “Respondent mother has a serious mental health disorder with a poor history of treatment.” While Respondent-Mother has battled mental illness, which if left untreated can shed light on poor decision making, “[t]he causal connection between the mental illness and the incapacity to provide proper care must be clear.” *In re J.M.W.*, 179 N.C. App. 788, 793, 635 S.E.2d 916, 920 (2006) (citation omitted). Similarly, there must be a clear causal connection between mental illness and the maintenance of an injurious environment or conclusion that the juvenile faces a substantial risk in his living environment. Additional evidence presented at disposition could expound upon the logical nexus between the severity and impact of Respondent-mother’s mental illness and the factors indicative of neglect. However, the stipulations alone do not paint a complete picture of that causal relationship.

¶ 27 Respondent-mother stipulated that Landon shared a room with Ethan, and that Landon was present in the room when Ethan died. The trial court found that this created an injurious environment. However, there was no additional evidence presented at adjudication to suggest the room itself was inherently dangerous. The stipulations are simply too vague to clearly and convincingly illustrate an injurious

environment based on the fact that Landon shared a bedroom with Ethan and was in that same room when Ethan died.

B. Conclusion of Neglect

¶ 28 Respondent-mother argues that the trial court's overall conclusion that Landon is a neglected juvenile is unsupported by the evidence and should be reversed. Respondent-mother stipulated to the fact that "Law enforcement indicated noticeable bruising on [Ethan's] body, and maltreatment was suspected." She contends that "not one stipulation admitted a cause of death for [Ethan] or a definitive source for [Ethan's] bruises." However, she does not specifically challenge the trial court's finding of fact 31, that "[i]t is relevant that the juvenile's now-deceased brother died of suspected maltreatment."

¶ 29 Pursuant to N.C. Gen. Stat. § 7B-101(15), the statutory definition of neglect specifically states that "it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect[.]" § 7B-101(15). "[T]he trial judge has discretion in determining the weight to be given to evidence of another child's abuse or neglect in determining whether a child is neglected." *In re S.G.*, 268 N.C. App. 360, 365, 835 S.E.2d 479, 484 (2019) (quotation marks and citation omitted); *see also In re Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994) ("[T]he statute affords the trial judge some discretion in determining the weight to be given such evidence."). Moreover, "[a] trial court only needs to find one

statutory ground for [neglect] before proceeding to the dispositional phase of the hearing.” *In re R.B.B.*, 187 N.C. App. 639, 647, 654 S.E.2d 514, 520 (2007).

¶ 30 Here, the trial court concluded that “suspected ‘maltreatment’ has the same meaning as suspected ‘abuse’ when determining whether the juvenile’s brother’s death is relevant to whether the juvenile is neglected under G.S. § 7B-101(15).” While the language of N.C. Gen. Stat. § 7B-101(15) does not command an adjudication of neglect if another child in the home was found to have died from suspected abuse or neglect, the trial court has some discretion in allocating the weight given to the evidence in making its determination. It is apparent from the adjudication order that the trial court weighed the fact that Ethan’s death resulted from suspected maltreatment and placed substantial weight on that finding in adjudicating Landon neglected. The trial court acted within its discretion in making that determination.

III. Conclusion

¶ 31 We find that the three sets of factual stipulations alone, without further evidentiary support not present at the adjudication hearing, did not clearly and convincingly support the trial court’s ultimate findings of fact 28, 29, 30, and 32. However, N.C. Gen. Stat. § 7B-101(15) affords the trial court some discretion in determining the weight to be given the fact that Landon’s brother Ethan died of suspected maltreatment while in the home. We find that the trial court weighed the

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evidence and emphasized this relevant factor. Accordingly, the trial court did not err in its overall conclusion that Landon was a neglected juvenile.

AFFIRMED.

Judge GRIFFIN concurs.

Judge INMAN concurs in result only.

Report per Rule 30(e).