

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-463

No. COA21-173

Filed 7 September 2021

Mecklenburg County, Nos. 20 JA 237-39

IN THE MATTER OF: H.M., Z.M., S.M.

Appeal by Respondent-Mother from Order entered 2 November 2020 by Judge David H. Strickland in Mecklenburg County District Court. Heard in the Court of Appeals 11 August 2021.

Rebekah P. Spaulding for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Lisa Anne Wagner for respondent-appellant mother.

Matthew D. Wunsche for guardian ad litem.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Respondent-Mother (Mother) appeals from the trial court's Adjudicatory Hearing and Disposition Order adjudicating Mother's children Harriet, Zeke, and Sarah dependent.¹ The Record tends to reflect the following:

¹ The parties stipulated to the use of these pseudonyms to protect the minor children's privacy.

IN RE H.M., Z.M., S.M.

2021-NCCOA-463

Opinion of the Court

¶ 2 On 15 May 2020, officers with the Charlotte-Mecklenburg Police Department (CMPD) responded to a call from Mother claiming her husband, E.M., had been kidnapped. CMPD officers met Mother in the parking lot of a Cracker Barrel restaurant in the “Queen City and Tacoma” area of Charlotte. There, Mother explained to officers that “Pineville Police may have kidnapped and killed her husband.” Officer C. Hughes (Officer Hughes) saw three children—Harriet, Zeke, and Sarah—in Mother’s vehicle. According to Officer Hughes, the children appeared “unkept,” and Mother told officers the children had not eaten “in a while.” Officer Hughes described Mother as “scared, anxious, angry. Then she, you know -- she was very emotional.” Mother gave officers contact information in an effort to find her husband E.M., but officers were unable to locate or contact him.

¶ 3 Officers were concerned about Mother, based on her behavior, prompting officers to request the “Community Policing Crisis Response Team” (CPCRT) come to the scene. The CPCRT “got involuntary commitment papers on” Mother, and Officer Hughes transported Mother to “Billingsley [BHC]” for evaluation.

¶ 4 That same day, the Charlotte-Mecklenburg Department of Social Services, Youth and Family Services (YFS) received an urgent referral as there was no one to care for the children. Melissa Shelley (Shelley) and Qiana Anthony (Anthony), YFS social workers, went to the police department to meet the children. Upon receiving the referral, YFS conducted a records check to try to determine who might be the

children's father; E.M. was listed as the father for all three children. YFS attempted to contact E.M. at an address YFS had on file, but was unable to contact him. YFS was also unable to speak to Mother while she received care at Billingsley BHC. YFS submitted a Juvenile Petition on 15 May 2020 that was filed on 18 May 2020. On 16 May 2020, YFS received a phone call from T.D. who claimed to be Sarah's father. YFS placed Harriet with one of the children's maternal aunts and placed Sarah and Zeke with another maternal aunt. YFS filed an Amended Juvenile Petition on 26 May 2020 that included additional information not included in the first Petition.

¶ 5

This case came on for a bifurcated adjudication and disposition hearing on 25 September 2020. Mother, E.M., and T.D. were present for the hearing as were Shelley, Anthony, and Officer Hughes. During the adjudication portion of the hearing, the trial court limited the evidence to only those alleged facts that occurred before and leading up to YFS taking custody of the children and submitting the first Petition on 15 May 2020. The trial court did allow evidence of clerical errors with Sarah's name and as to the date of the first Petition. The trial court also allowed evidence that T.D. was, in fact, Sarah's father so that T.D. would have standing as a party to the adjudication hearing. Neither Mother, E.M., nor T.D. presented any evidence at the hearing. At the close of evidence in the adjudication portion of the hearing, the trial court adjudicated all three children dependent. After the

disposition portion of the hearing, the trial court placed Sarah with her father T.D. and ordered Harriet and Zeke to remain in YFS's legal custody.

¶ 6

The trial court entered a written Adjudicatory Hearing and Disposition Order on 2 November 2020. The trial court's Order included the following relevant Findings of Fact:

a. Melissa Shelley is the YFS investigative social worker supervisor who got the referral on May 15, 2020. She responded and went to the Freedom Division Police Department where there were three children in a room that the police were monitoring. . . . [Mother] at that time was at the BHC and [Mother] did not know where her husband [E.M.] was. The Department did not know about [T.D.] on May 15, 2020. Ms. Shelley was unable to speak to [Mother] because she was at Billingsley BHC due to mental health concerns and IVC. Ms. Shelley did go to Tacoma Street - [Mother's and E.M.'s] last known address - and left a note for [E.M.].

. . . .

d. Qiana Anthony is also an investigator with the Department under the supervision of Ms. Shelley who also worked on this case. She attempted to contact [E.M.], calling and leaving texts, and was not able to get in touch with him.

e. Officer Joseph Pearson . . . responded to the scene on May 15, 2020 at the Cracker Barrel where [Mother] was with the three children . . . where she disclosed that it was her belief that the Pineville Police Department had kidnapped and killed her husband. At that point, officers went to do a welfare check to the apartment on Tacoma Street. At that apartment, the door was open and there were piles of clothes and the television was on. It was described as an unkept residence.

f. Officer Charmaine Hughes with CMPD was the initial officer who ran into [Mother] [Mother] was described as scared, anxious, emotional, and angry. . . . The officer also tried to contact

[E.M.'s] mother and his work and was unsuccessful. The Community Policing Crisis Response Team (CPCRT) responded to the scene and Officer Hughes transported [Mother] to Billingsley BHC.

g. As a result of the above facts, the Department filed a petition.

Based on these Findings, the trial court “conclude[d] as a matter of law”:

2. [Harriet, Zeke, and Sarah] are dependent juveniles as defined by N.C. Gen. Stat. §7B-101 in that:

a. The juveniles are in need of assistance or placement because (i) the juveniles have no parent, guardian, or custodian responsible for the juveniles’ care or supervision or (ii) the juveniles’ parent, guardian, or custodian is unable to provide for the juveniles’ care or supervision and lacks an appropriate alternative child care arrangement.

¶ 7 Mother filed written Notice of Appeal of “the Final Adjudication and Disposition Hearing Orders” on 22 December 2020.

Issue

¶ 8 The issue on appeal is whether the trial court supported its Conclusion the three children were dependent with appropriate findings of fact.

Analysis

¶ 9 Mother argues the trial court erred in adjudicating the three children as dependent because the trial court did not include the necessary findings of fact to support that Conclusion. “The allegations in a petition alleging that a juvenile is

abused, neglected, or dependent shall be proved by clear and convincing evidence.” N.C. Gen. Stat. § 7B-805 (2019). This Court reviews a challenge of an adjudication order 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.M.*, 183 N.C. App. 84, 88, 643 S.E.2d 644, 646 (2007) (citation and quotation marks omitted). “[T]he trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *Id.* (citation and quotation marks omitted) “Absent exceptional circumstances, the trial court may only look to the circumstances before the court at the time the petition was filed when considering whether a juvenile is dependent at the adjudication stage.” *In re E.P.-L.M.*, 272 N.C. App. 585, 597, 847 S.E.2d 427, 437 (2020) (citation omitted).

¶ 10 Mother does not challenge the trial court’s Findings of Fact; therefore, the trial court’s Findings are conclusive on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citation omitted). However, Mother argues the trial court’s Findings do not support its legal Conclusion the children were dependent because the trial court did not make ultimate findings of fact required under the North Carolina Juvenile Code and Rules of Civil Procedure. Our Juvenile Code requires adjudicatory orders to “contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-807(b) (2019). The North Carolina Rules of Civil Procedure require trial

courts to “find the facts specifically and state separately its conclusions of law[.]” N.C. Gen. Stat. § 1A-1, Rule 52(a) (2019). “Rule 52(a) . . . does require *specific findings* of the ultimate facts established by the evidence . . . which are determinative of the questions involved . . . and essential to support the conclusions of law reached.” *In re K.R.C.*, 374 N.C. 849, 856, 845 S.E.2d 56, 61 (2020) (citation omitted). In this case, the relevant question the trial court had to resolve was whether the children were dependent under the Juvenile Code. The Juvenile Code defines a dependent juvenile as:

A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) 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) (2019).

¶ 11 Specifically, Mother argues the trial court did not make the specific ultimate findings the children had no parent responsible for their care or supervision or the parents were unable to provide for the children’s welfare and lacked an appropriate alternative child care arrangement. However, the trial court concluded “as a matter of law”:

[The children] are dependent juveniles as defined by N.C. Gen. Stat. §7B-101 in that:

a. The juveniles are in need of assistance or placement because (i) the juveniles have no parent, guardian, or custodian responsible for the juveniles' care or supervision or (ii) the juveniles' parent, guardian, or custodian is unable to provide for the juveniles' care or supervision and lacks an appropriate alternative child care arrangement.

This Conclusion disposes of the pertinent issue in this dependency case as the trial court determined that at the time the Petition was filed the children had no parent responsible for their care or supervision or that the children's parents were unable to provide for the children's care or supervision and did not provide an alternative child care arrangement. N.C. Gen. Stat. § 7B-101(9) (2019). Moreover, the trial court labelling these ultimate Findings as a Conclusion was not error so long as the ultimate Findings were supported by the trial court's other Findings. *In re A.H.F.S.*, 375 N.C. 503, 510, 850 S.E.2d 308, 315 (2020) ("Although set forth in the conclusions of law, the trial court's determination of willfulness was an ultimate finding of fact.").

¶ 12 Here, the trial court's other Findings of Fact support its determination the children had no parent responsible for their care or supervision or that the children's parents could not provide care or supervision or an appropriate alternate child care arrangement. The trial court found YFS believed E.M. to be the children's father, and although T.D. was Sarah's father, YFS did not know this fact. In fact, the trial court only included this Finding in order to confer standing to T.D. in the adjudication hearing as the trial court only allowed evidence dating from 15 May 2020 and earlier.

YFS did not become aware T.D. was Sarah’s father until 16 May 2020. The trial court further found YFS attempted to contact E.M. by leaving him texts and visiting Mother’s and E.M.’s last known address where YFS left E.M. a letter, but YFS was not able to get in touch with E.M. Thus, the trial court’s Findings support the ultimate Finding the children, based on YFS’s knowledge on 15 May 2020, had no father responsible for their care or supervision because YFS could not locate E.M. and had not been provided with the information that T.D. was Sarah’s father.

¶ 13 The trial court’s Findings also support the ultimate Finding the parents were unable to provide for the children’s care or supervision and lacked an appropriate alternative child care arrangement.² The trial court found: Mother told CMPD that police had kidnapped and killed her husband E.M.; that police described Mother as “scared, anxious, emotional, and angry”; and that “Officer Hughes transported [Mother] to Billingsley BHC”, and YFS could not speak to Mother “due to mental health concerns and [Mother’s involuntary commitment].” Thus, the trial court’s Findings regarding concerns for Mother’s mental health at the time and that Mother was involuntarily committed support the ultimate Finding Mother was unable to

² Mother argues the “evidence does not support a finding that [Mother] was unable to provide for the children’s care” because she assisted law enforcement in their efforts to find E.M. However, ultimately, neither law enforcement nor YFS were able to locate or contact E.M. Therefore, the evidence supports the trial court’s determination Mother was unable to provide for the children’s care or provide an appropriate, alternative arrangement.

provide for the children’s care or supervision. Moreover, the trial court’s Finding YFS was unable to speak to Mother while she was committed supports the ultimate Finding Mother lacked an appropriate alternative child care plan as she could not communicate such a plan. Therefore, the trial court’s Findings supported its ultimate Finding—labelled a Conclusion—Mother could not provide for the children’s care or supervision and lacked a suitable alternative. Consequently, the trial court did not err in concluding all three children were dependent “as defined by N.C. Gen. Stat. §7B-101[.]”³

Conclusion

¶ 14 Accordingly, for the foregoing reasons, the trial court did not err in adjudicating the three children dependent, and the trial court’s Order is affirmed.

AFFIRMED.

Judges ZACHARY and JACKSON concur.

Report per Rule 30(e).

³ In her reply brief, Mother argues Sarah could not be adjudicated dependent because the trial court found T.D. was Sarah’s father and placed Sarah with her father. Thus, Mother contends, Sarah did have a parent responsible for her care and supervision, and T.D. was able to provide that care and supervision. However, although the trial court found T.D. was Sarah’s father, the trial court also found YFS did not know T.D. was Sarah’s father at the relevant time. Thus, based on YFS’s knowledge on 15 May 2020, T.D. would not have been a parent responsible for Sarah’s care.