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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-568

No. COA21-216

Filed 19 October 2021

Bladen County, No. 20 JA 7

IN THE MATTER OF:

A.T.

Appeal by Respondent-Mother from orders rendered in open court on 23 October 2020 by Judge W. Frederick Gore, signed and entered by Chief Judge Scott Ussery on 14 January 2021 in Bladen County District Court.<sup>1</sup> Heard in the Court of Appeals 22 September 2021.

*Forrest Firm, P.C., by Valerie Bateman, for Appellee Guardian ad Litem.*

*Batch, Poore & Williams, PC, by Sydney Batch, for Respondent-Appellant Mother.*

*No brief filed for Appellee DSS.*

COLLINS, Judge.

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<sup>1</sup> This Court takes judicial notice of the fact that Judge W. Frederick Gore, the presiding district court judge, began serving as a judge on the North Carolina Court of Appeals on 1 January 2021. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 63, “If by reason of . . . expiration of term . . . or other reason, a judge before whom . . . a hearing has been held is unable to perform the duties to be performed by the court under these rules after a . . . hearing is otherwise concluded, then those duties, including entry of judgment, may be performed . . . [i]n actions in the district court, by the chief judge of the district . . . .”

¶ 1 Mother appeals from orders adjudicating her minor daughter neglected and dependent and awarding custody of her to the Bladen County Department of Social Services. Because the trial court’s findings of fact do not support its conclusions of law that the juvenile is neglected and dependent, we vacate and remand.

### **I. Background**

¶ 2 On 31 March 2020, Bladen County Department of Social Services (“BCDSS”) received a report alleging that Ann<sup>2</sup> was being molested by her maternal grandmother’s boyfriend. After receiving the report, Officer Herbert Harris of the White Lake Police Department and Megan Thompson, a social worker with BCDSS, went to Mother’s apartment and attempted to make contact with her.

¶ 3 Approximately three weeks prior to receiving the BCDSS report, Harris had been called to the same apartment for a matter “that had nothing to do with [Ann or Mother].” Upon his arrival, Harris saw a male and a female sitting inside a pickup truck, both of whom went inside the apartment as soon as Harris approached. Harris noticed a single capped needle laying on the ground outside the apartment. When Harris knocked on the door, the female opened it, and Harris spotted several capped “needles inside the residence.” Harris “didn’t see any illegal drugs inside, just syringes . . . laying around,” and he told the female to “clean up the needles[.]” Harris

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<sup>2</sup> We use a pseudonym to protect the identity of the juvenile. *See* N.C. R. App. P. 42(b).

was unable to recall the names of the male or female, but he was certain that the female was not Mother. Harris did not see a juvenile at any point during the interaction.

¶ 4

When Harris and Thompson arrived at Mother's apartment on 31 March 2020, Harris was unable to locate Mother, but Thompson was able to find and speak with her at a local park. Mother told Thompson that she had abused substances in the past and was receiving outpatient care. She explained that she was trying to obtain alternative housing because others in her household used substances, but that they did not use in front of Ann. Thompson asked Mother to identify a safety placement for Ann, and Mother agreed to let the Freeman family care for Ann. The safety placement was disrupted after three days, and BCDSS held a meeting with Mother to discuss alternative safety placements. Mother identified Ann's paternal grandparents as a second safety placement, and voluntarily placed Ann into her home.

¶ 5

During BCDSS's investigation, a child medical evaluation was completed on Ann, and Thompson obtained Mother's medical records from the outpatient treatment center where she had received care for substance use. Thompson testified that Mother said she was not using or abusing substances but had used and tested positive during drug screens in the past. Mother also reported that she had been prescribed and used Suboxone in the past.

¶ 6 On 18 May 2020, BCDSS filed a petition alleging that Ann was neglected and dependent. BCDSS requested nonsecure custody of Ann, which was granted the same day; Ann remained in the custody of her paternal grandparents. Non-secure custody hearings were held on 20 May and 22 July, and non-secure custody was continued with BCDSS.

¶ 7 An adjudication hearing was held on 23 October 2020, following which the trial court rendered an oral ruling adjudicating Ann neglected and dependent. The trial court proceeded immediately to the disposition hearing, following which the trial court announced that reunification was a primary plan, that the plan then in place should continue until after COVID-19 subsides, and setting forth visitation. Written adjudication and disposition orders were entered on 14 January 2021. Mother filed timely notice of appeal on 19 January 2021.

## II. Discussion

¶ 8 Mother argues that the trial court erred by adjudicating Ann neglected and dependent.

¶ 9 We review adjudications of neglect and dependency to determine whether the trial court's findings of fact are based on clear and convincing evidence and whether the trial court's findings support its conclusions of law. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). "A proper finding of fact requires a specific statement of the facts on which the rights of the parties are to be determined, and

those findings must be sufficiently specific to enable an appellate court to review the decision and test the correctness of the judgment.” *In re T.P.*, 197 N.C. App. 723, 729, 678 S.E.2d 781, 786 (2009) (quotation marks, brackets, and citation omitted). “[W]hether a trial court’s findings of fact support its conclusions of law is reviewed de novo.” *In re J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 71 (2020) (citation omitted).

### **A. Neglect**

¶ 10 A neglected juvenile is 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) (2020). “[I]n order for a court to find that the child resided in an injurious environment, evidence must show that the environment in which the child resided has resulted in harm to the child or a substantial risk of harm.” *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016) (citation omitted).

¶ 11 Finding of fact 8, the sole finding that addresses neglect, states:

8. That the Court finds based upon direct statements of the respondent mother and Officer Herbert Harris and statements from family members and other circumstantial evidence that leads the Court to believe that the juvenile was in a neglected environment at times but also based not just on substance abuse but upon direct statements from the juvenile and Steven Williams the brother of respondent mother, that there is a level of domestic violence and fighting going on in the residence that the juvenile was exposed to that makes the juvenile uncomfortable with the family function in that home. So not just substance abuse

created an environment injurious to the well being of the juvenile but uncontroverted and uncontested evidence that there were fights between the respondent mother’s brother, Steven Williams, and the grandmother, Wendy Griffin and that the juvenile was exposed to and the juvenile disclosed to the clinician and that clearly is making the juvenile feel uncomfortable and feel unsafe in the home. Those two issues lead to living in an environment injurious to the juvenile’s welfare.<sup>3</sup>

¶ 12 The finding references “substance abuse” but does not state who abused substances; whether substances were abused in or around the home in which Ann lived; or whether Ann was exposed to, or in danger of being exposed to, illegal substances or individuals engaged in substance abuse. The finding also states that Ann was exposed to fights between Ann’s uncle and grandmother, which made her feel uncomfortable and feel unsafe in the home. There is no record evidence that Ann felt unsafe in the home as a result of exposure to these fights. Moreover, the finding includes no details about specific fights and no details about the fights in general—frequency and duration, for example—which would support a finding or conclusion that the fights resulted in harm or a substantial risk of harm to Ann.

¶ 13 Finding of fact 8 is insufficient to support a conclusion that Ann does not receive “proper care, supervision, or discipline” from her Mother or “lives in an environment injurious to the juvenile’s welfare . . . .” N.C. Gen. Stat. § 7B-101(15).

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<sup>3</sup> This finding is an almost verbatim recitation of what was announced in open court.

Accordingly, the finding is insufficient to support a conclusion of law that Ann was a neglected juvenile. *See In re J.C.M.C.*, 268 N.C. App. 47, 58, 834 S.E.2d 670, 678 (2019) (findings that mother’s “yelling and cursing” at home and “verbally attack[ing] the school bus driver” in front of the children “sp[oke] to the quality of the children’s home environment” but were “not enough to support a determination that the children are neglected”).

### **B. Dependency**

¶ 14 N.C. Gen. Stat. § 7B-101(9) defines a dependent juvenile in relevant 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) (2020). “Under this definition, the trial court must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). “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) (citation omitted).

¶ 15 Finding of fact 9, the sole finding that mentions dependency, states:

9. That the Court does agree with counsel for respondent

mother on dependency however, in the petition and in the testimony, a date for placement even if it was before April 2, when the BCDSS had the family and juvenile in a Child Family Team Meeting at least on that date, social worker testified that it was brought to BCDSS attention if no date prior, that the juvenile was dependent because there was a necessity to place the juvenile in another placement. The Court agrees with counsel that in the body of the petition, testimony in the record establishes a date now whether ongoing up unto April 2<sup>nd</sup>, 2020 and it was finally proved on the 2<sup>nd</sup> however this was the date that identified the juvenile as dependent as of April 2<sup>nd</sup>, 2020 because that was when it was confirmed that the juvenile was going to be placed somewhere other than in the Freeman's home.<sup>4</sup>

¶ 16 This finding does not address either prong of N.C. Gen. Stat. § 7B-101(9) and is insufficient to support the conclusion of law that Ann is a dependent juvenile.

### III. Conclusion

¶ 17 The trial court's findings of fact do not support the conclusions of law that Ann is a neglected and dependent juvenile. We vacate the adjudication order and the resulting disposition order. *See In re K.J.B.*, 248 N.C. App. at 357, 797 S.E.2d at 519. Our holdings do not mean the record could not have supported an adjudication of neglect or dependency. We hold only that the adjudication order lacks specific findings that our precedent requires, and we must therefore vacate and remand. On remand, the trial court must hold a new hearing, following which the trial court should make findings of fact supported by competent admissible evidence found to be

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<sup>4</sup> This finding is an almost verbatim recitation of what was announced in open court.

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clear and convincing, and further, make new conclusions of law whether Ann is a neglected and/or dependent juvenile.

VACATED AND REMANDED.

Judges DILLON and WOOD concur.

Report per 30(e).