

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-600

No. COA21-263

Filed 2 November 2021

Forsyth County, No. 20 JA 19

IN THE MATTER OF: M.J.

Appeal by Respondent-Mother from an order entered 13 January 2021 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 21 September 2021.

*Assistant County Attorney Melissa Starr Livesay for Petitioner-Appellee Forsyth County Department of Social Services.*

*Kathleen M. Joyce for Respondent-Mother.*

*GAL Appellate Counsel Matthew D. Wunsche for Appellee Guardian Ad Litem.*

INMAN, Judge.

¶ 1

Among the most heartbreaking cases that find their way to court are those alleging that a child has been neglected. Our district court judges are tasked with (1) hearing grim, detailed, and often disputed evidence, (2) making decisions that change the lives of children and their parents, and (3) entering thorough written orders to support those decisions. Even when evidence supports a trial court's order adjudicating a child neglected, we must vacate the order if it fails to include required findings of fact.

¶ 2

Respondent-Mother (“Mother”) appeals from an adjudication and disposition order adjudicating her daughter M.J. (“Mallory”)<sup>1</sup> neglected and placing her in the continued custody of Petitioner-Appellee Forsyth County Department of Social Services (“DSS”). Mother asserts that the trial court: (1) failed to make adequate ultimate findings in support of its adjudication; and (2) abused its discretion in denying her visitation while Mallory is in DSS custody. After careful review, we agree with Mother that the trial court’s findings are inadequate to support its adjudication and vacate the order with instructions on remand to make proper findings resolving DSS’s petition. Because vacating the trial court’s adjudication requires vacatur of its disposition, we do not address Mother’s second argument.

**I. FACTUAL AND PROCEDURAL HISTORY**

¶ 3

The record below discloses the following:

¶ 4

Mallory was born in June 2010. When Mallory was five years old, Mother was arrested on several outstanding warrants, leading DSS to investigate whether Mother was providing adequate care to Mallory. DSS was unable to locate Mother and Mallory and terminated its investigation.

¶ 5

Four years later, when Mallory was nine years old, Mother and Respondent-Father (“Father”) were arrested for breaking into storage units with Mallory present.

---

<sup>1</sup> We identify the minor child by pseudonym to protect her privacy and for ease of reading.

IN RE M.J.

2021-NCCOA-600

*Opinion of the Court*

While her parents were incarcerated, Mallory was released into the care of her maternal uncle, who informed DSS that Mallory had previously witnessed acts of domestic violence between her parents. Mallory's uncle was arrested a short time later, and Mallory moved in with her adult sister.

¶ 6

A DSS social worker spoke with Mallory in December 2019 and learned that Mallory's parents used methamphetamines, crack cocaine, and alcohol while in her presence. Mallory also said that Mother had attempted to force her to take methamphetamines and blew methamphetamine smoke in her face when she refused. She confirmed her uncle's report that she had witnessed Mother and Father physically attack each other and reported that Mother repeatedly beat her, threatened her with weapons, and verbally abused her. Mallory recounted several occasions when she and her Mother fled from police together. She said she and her parents were homeless and lived in cars or hotels.

¶ 7

The DSS worker learned that while in her parent's custody, Mallory had not been enrolled in school since kindergarten. Shortly after her parents' arrest, she enrolled in second grade, but she was severely behind academically. Programs were available to remedy these learning deficits, but Mother and Father reportedly refused to consent to allow Mallory to receive such assistance. Mallory's parents likewise refused to allow her to receive needed counselling to address the abuse and trauma she reported witnessing in her parents' care.

IN RE M.J.

2021-NCCOA-600

*Opinion of the Court*

¶ 8 DSS filed a juvenile petition alleging neglect based on the above reports. The petition alleged neglect based on: (1) lack of proper care, supervision, or discipline; (2) lack of necessary remedial care; and (3) an environment injurious to Mallory's welfare. DSS received nonsecure custody and continued Mallory's placement with her adult sister.

¶ 9 The trial court held a disposition hearing on DSS's petition on 18 September 2020, and DSS called several witnesses to support its petition. Two law enforcement officers testified about arresting Mother and Father for breaking into storage units. They further testified about Mallory's reports of homelessness, her parents' drug usage, and incidents of domestic violence. Mallory also testified and corroborated the DSS allegations of drug usage, homelessness, theft, inadequate education, and domestic violence. She asked that she not be returned to her parents' custody.

¶ 10 DSS then called Mallory's adult sister as a witness, who testified about Mallory's education setbacks and incidents of her parents' methamphetamine use, homelessness, thefts, and acts of domestic violence. A forensic examiner testified that Mallory gave similar accounts during an interview, and a teacher testified to Mallory's withdrawal from kindergarten for ten days of consecutive absences. Finally, a social worker testified to Mallory's educational deficiencies and Mother's refusal to allow remedial evaluations.

¶ 11 Mother testified in opposition to the petition. She denied all the allegations, leading the trial court to call a recess out of concern that Mother was on the verge of committing perjury. When proceedings resumed, Mother’s counsel informed the trial court that her client had a sudden illness and had left to visit a doctor. The trial court proceeded with the hearing without Mother present and adjudicated Mallory neglected. At the disposition hearing on 23 September 2020, the trial court ordered that DSS maintain continued custody and that neither parent have visitation without filing a motion and obtaining an order from the court. The trial court entered a written adjudication and disposition order on 13 January 2021. Mother appeals.

## II. ANALYSIS

¶ 12 Mother argues that: (1) the trial court’s written order lacks adequate ultimate findings to support an adjudication of neglect; and (2) the trial court abused its discretion in prohibiting visitation. We vacate the trial court’s order and remand this matter with instructions to the trial court to make sufficient findings to support any adjudication as to neglect. Because we vacate both the adjudication and disposition portions of the order, we need not address Mother’s second argument.

### *1. Standard of Review*

¶ 13 This Court reviews an order adjudicating a juvenile abused, neglected, or dependent 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 Pittman*, 149 N.C. App. 756, 763–64, 561 S.E.2d 560, 566 (2002) (citation and quotation marks omitted). “The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*.” *In re V.B.*, 239 N.C. App. 340, 341, 768 S.E.2d 867, 868 (2015).

## 2. Sufficiency of Findings

¶ 14 Adjudicatory orders in abuse, neglect, and dependency proceedings “shall be in writing and shall contain appropriate findings of fact and conclusions of law.” N.C. Gen. Stat. § 7B-807(b) (2019). This requirement exists in part “[t]o provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents.” N.C. Gen. Stat. § 7B-100(1) (2019). To comply with the statutory mandate, “the trial court must, through ‘processes of logical reasoning,’ based on the evidentiary facts before it, ‘find the ultimate facts essential to support the conclusions of law.’” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (quoting *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003)). Adequate findings are those “ ‘sufficiently specific’ to allow an appellate court to ‘review the decision and test the correctness of the judgment.’ ” *Id.* (quoting *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)). A summary declaration of neglect, without reference to the statutory grounds alleged in the petition or “any one incident or a series of incidents as a basis for [the] determination of neglect,” is insufficient to satisfy the trial court’s duty to find

ultimate facts. *In re T.M.M.*, 167 N.C. App. 801, 803, 606 S.E.2d 416, 417 (2005) (citation omitted); *see also In re S.C.R.*, 217 N.C. App. 166, 169–70, 718 S.E.2d 709, 712 (2011) (holding adjudicatory order lacked requisite ultimate findings to support adjudications of neglect or dependency in part because the “trial court made no findings . . . linking any of respondent’s actions to dependency or neglect”).

¶ 15 In this case, the trial court made 22 findings before summarily concluding Mallory “is a neglected child as defined by [Section] 7B-101(15).” Findings 1-7 and 16-18 recount the procedural history of the case, while Findings 8-15 describe Mallory’s history with DSS and the allegations giving rise to DSS’s petition. These findings recount in detail circumstances that could support a conclusion that Mallory was neglected, but they do not “reference . . . the statutory basis for [that] conclusion . . . [or] cite any one incident or a series of incidents as a basis for [a] determination of neglect.” *T.M.M.*, 167 N.C. App. at 803, 606 S.E.2d at 417.

¶ 16 The final three findings by the trial court do not contain the necessary ultimate findings. Finding 19 recounts Mother’s testimony “den[ying] everything,” and thus amounts to a recitation of testimony rather than a proper finding of fact. *See In re N.D.A.*, 373 N.C. 71, 75, 833 S.E.2d 768, 772 (2019). The next two findings are evidentiary, stating:

20. The Mother did not register to home school the minor child [Mallory] and does not have a diploma to home school [Mallory].

IN RE M.J.

2021-NCCOA-600

*Opinion of the Court*

21. The minor child [Mallory] was eating unhealthy [sic], poor hygiene [sic], and sleeping in a car. [Mallory] was with the Mother when she stole from stores such as Target, Khol's [sic], and Walmart, changing clothing tags due to the Mother and the Father refusing to get a job [sic].

The trial court's final finding, 22, confusingly states that "[t]he testimony provided by the minor child [Mallory] was enough evidence for a level of proof." As with Findings 1-18, none of these findings concerned ultimate facts identifying the trial court's basis or bases for deeming Mallory neglected. Such an ultimate finding is necessary for us to test the correctness of the judgment, as "not every act of negligence on the part of parents or other care givers constitutes 'neglect' under the law and results in a 'neglected juvenile.'" *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003).

¶ 17 DSS argues that we may uphold the trial court's order absent an ultimate finding linking the facts to a determination of neglect because the findings and evidence, construed together, make the rationale for adjudicating Mallory neglected clear. But the cases DSS cites for this proposition, *In re B.C.T.*, 265 N.C. App. 176, 828 S.E.2d 50 (2019), and *In re A.C.*, 247 N.C. App. 528, 786 S.E.2d 728 (2016), both concerned the adequacy of findings as to the children's best interests rather than abuse, neglect, or dependency determinations at the adjudication phase. *See B.C.T.*, 265 N.C. App. at 188, 193, 828 S.E.2d at 58, 61 (reversing a dispositional order that



lacked adequate findings or record evidence as to the best interest of the child); *A.C.*, 247 N.C. App. at 549–52, 786 S.E.2d at 743–44 (affirming an order modifying child custody because the findings and evidence supported a conclusion of substantial change of circumstances affecting the juvenile’s best interest). And while we “will examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts necessary to dispose of the case,” *In re L.Z.A.*, 249 N.C. App. 628, 634, 792 S.E.2d 160, 166 (2016), only the trial court is authorized to find ultimate facts. As our Supreme Court has previously held:

Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must support findings; findings must support conclusions; conclusions must support the judgment. *Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself.* Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.

*Coble v. Coble*, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980) (emphasis added).

¶ 18 The Guardian ad Litem offers a similar argument as DSS, instead relying on our unpublished—and thus non-binding—decision in *In re A.V.I.*, 272 N.C. App. 446, 843 S.E.2d 734, 2020 WL 3722239 (2020) (unpublished). We upheld the disposition order in *A.V.I.* based on caselaw holding that the failure to make an ultimate finding

in support of neglect is not error “where *all* the evidence supported such a finding.” *Id.* at \*5 (citing *In re Safriet*, 112 N.C. App. 747, 753, 436 S.E.2d 898, 902 (1993)) (emphasis added). Even if we were to find *A.V.I.* to be persuasive authority, *A.V.I.* is inapposite. Here, by contrast, there is conflicting evidence in light of Mother’s testimony denying all of the allegations against her.

¶ 19 We acknowledge that the trial court stated ultimate findings in its oral ruling at the conclusion of the disposition hearing. But “prior opinions of this Court have made clear that, as a general proposition, the written and entered order or judgment controls over an oral rendition of that order or judgment,” *In re O.D.S.*, 247 N.C. App. 711, 721, 786 S.E.2d 410, 417 (2016), and “each link in the chain of reasoning must appear in the order itself.” *Coble*, 300 N.C. at 714, 268 S.E.2d at 190. Because the written order in this case lacks the required ultimate findings identifying the basis or bases for the trial court’s conclusion of neglect, we vacate the order and remand with instructions to enter an order that contains all findings necessary to dispense with DSS’s petition. *See In re Q.M.*, 275 N.C. App. 34, 42–43, 852 S.E.2d 687, 693–94 (2020) (vacating an adjudication order that lacked adequate findings as to dependency and remanding for proper findings adequately addressing the issue). Our vacatur of the trial court’s adjudication of neglect also requires that we vacate the disposition entered, and we therefore need not resolve Mother’s remaining arguments. *See id.*; *see also S.C.R.*, 217 N.C. App. at 170–71, 718 S.E.2d at 713.

IN RE M.J.

2021-NCCOA-600

*Opinion of the Court*

**III. CONCLUSION**

¶ 20

For the foregoing reasons, we vacate and remand the trial courts order with instructions to enter an order reciting all findings necessary to resolve DSS's petition; should the trial court again conclude Mallory neglected, it must do so in an order containing required ultimate findings setting forth the specific basis or bases for that conclusion. We leave any decision to conduct a new hearing, take additional evidence, or rely on the existing record to the sound discretion of the trial court as to adjudication. *In re J.M.D.*, 210 N.C. App. 420, 428–29, 708 S.E.2d 167, 173–74 (2011).

VACATED AND REMANDED WITH INSTRUCTIONS.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).