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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-710

No. COA21-295

Filed 21 December 2021

Guilford County, No. 20 JA 94

IN THE MATTER OF: B.H.

Appeal by Respondents from order entered on 23 February 2021 by Judge Angelica C. Foster in Guilford County District Court. Heard in the Court of Appeals 2 November 2021.

*Mercedes O. Chut for the Petitioner-Appellee Guilford County Department of Health and Human Services.*

*Mark L. Hayes for the Respondent-Appellant Father.*

*Anné C. Wright for the Respondent-Appellant Mother.*

*Pinto Coates Kyre & Bowers, PLLC, by Jon Ward, for the Guardian ad Litem.*

JACKSON, Judge.

¶ 1 Respondent Mother (“Mother”) and Respondent Father (“Father”) (collectively, “Respondents”) appeal from the trial court’s order adjudicating their daughter, Brianna,<sup>1</sup> neglected. We affirm the order of the trial court.

## I. Background

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<sup>1</sup> We use pseudonyms to refer to the juveniles discussed in this opinion to protect the juveniles’ privacy and for ease of reading. See N.C. R. App. P. 42(b).

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¶ 2 On 15 December 2017, the Guilford County Department of Health and Human Services (“DHHS”) obtained nonsecure custody of Respondents’ oldest child, Jason. He needed medical attention, and there were allegations that Respondents were homeless and had engaged in domestic violence in his presence.

¶ 3 On 30 November 2018, DHHS obtained nonsecure custody of Respondents’ second child, Betty. Betty was born while Jason was in DHHS custody. Mother experiences mental health issues and has been diagnosed with schizophrenia. Mother’s mental health issues, combined with the conditions that led to Jason coming into DHHS custody, were the basis for Betty coming into DHHS custody.

¶ 4 Brianna was born on 8 October 2020. Guilford County Child Protective Services (“CPS”) received a report the next day alleging that Respondents were unable to care for Brianna because of Mother’s mental health issues. In the roughly three-year period since Jason entered DHHS custody, Respondents had not progressed to a trial home placement or unsupervised visits with Jason or Betty. On 9 December 2019, DHHS filed a petition to terminate Respondents’ parental rights to Jason and Betty.

¶ 5 On 12 October 2020, DHHS filed a petition alleging that Brianna was neglected and dependent. Nonsecure custody of Brianna was granted to DHHS the same day.

¶ 6 The matter came on for pre-adjudication, adjudication, and disposition before the Honorable Angelica C. Foster in Guilford County District Court on 11 November

2020. At the conclusion of the hearing on adjudication, the trial court adjudicated Brianna neglected but dismissed the allegations of dependence. The court entered an order to that effect on 23 February 2021.

¶ 7 Respondents both entered timely written notice of appeal from the trial court's order.

## II. Analysis

¶ 8 Respondents collectively challenge seven of the trial court's findings of fact and make essentially five arguments on appeal. We begin by reviewing the unchallenged findings in the trial court's order and then turn to the challenged findings. After resolving Respondents' challenges to the trial court's factual findings, we address their principal legal arguments: (1) that the adjudication of Brianna as neglected was based entirely on prior DHHS history of the parents with other children, which was improper; (2) that the findings regarding Brianna's older siblings, Jason and Betty, were too vague and remote in time to support the adjudication of Brianna; (3) that the trial court's findings do not demonstrate that there was a substantial risk of harm to Brianna; (4) that demonstrating a substantial risk of harm to Brianna was not possible because Respondents identified potential alternative placements for Brianna; and (5) that the primary basis for the adjudication was Mother's noncompliance with mental health treatment and the adjudication should therefore be without prejudice to Father in any subsequently filed petition for termination of

parental rights concerning Brianna.

### **A. Standard of Review**

We review an adjudication under N.C. Gen. Stat. § 7B-807 to determine whether the trial court's findings of fact are supported by "clear and convincing competent evidence" and whether the court's findings support its conclusions of law. The "clear and convincing" standard is greater than the preponderance of the evidence standard required in most civil cases. Clear and convincing evidence is evidence which should fully convince. Findings of fact unchallenged by the appellant are binding on appeal.

*In re K.L.*, 272 N.C. App. 30, 36, 845 S.E.2d 182, 188-89 (2020) (internal marks and citation omitted). However, "[w]hen . . . ample [] findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error." *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

¶ 9 "Whether a child is neglected is a conclusion of law which must be supported by adequate findings of fact." *In re R.L.G.*, 260 N.C. App. 70, 75, 816 S.E.2d 914, 918 (2018) (citation omitted). "[W]e review a trial court's conclusions of law de novo." *In re K.L.*, 272 N.C. App. at 36, 845 S.E.2d at 189 (citation omitted). "Under a de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Id.* (internal marks and citation omitted).

### **B. Unchallenged Findings**

¶ 10 The trial court made the following relevant, unchallenged findings of fact in

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the order adjudicating Brianna neglected:

3. The juvenile who is the subject of this proceeding is [Brianna], who is one (1) month old, having been born on October 8, 2020.

4. Paternity of the juvenile, [Brianna], is an issue and has not been established through DNA paternity testing as of this hearing. The mother . . . is legally married to [Father]; therefore, he is the legal father of the juvenile. [Father] did submit to paternity testing in or around October of 2020, and those results are still pending as of this hearing.

5. The juvenile, [Brianna,] is currently placed in a Guilford County licensed foster home, and her needs are being met in this placement.

6. The mother of the juvenile . . . is present for today's hearing with her court appointed attorney . . . . The mother was born on May 31, 1991. The mother is a resident of Guilford County, North Carolina. The mother is legally married to the father . . . and the juvenile, [Brianna], was born of the marriage. The mother was served with copies of the Juvenile Petition, Order for Nonsecure Custody, and Summons in this matter by Sheriff at the hearing on October 15, 2020.

7. The legal father of the juvenile . . . is present for today's hearing with his court appointed attorney . . . . The father was born on September 5, 1973. The father is a resident of Guilford County, North Carolina. The father is legally married to the mother . . . and the juvenile, [Brianna], was born of the marriage. [Father] submitted to paternity testing in or around October of 2020, and those results are still pending as of this hearing. [Father] was served with copies of the Juvenile Petition, Order for Nonsecure Custody, and Summons in this matter by Sheriff at the hearing on October 15, 2020.

...

15. The Court received sworn testimony from the following witnesses regarding adjudication: Chelsea Clyburn, Tania Fox, and [Mother].

...

18. Social Worker Clyburn spoke with the father . . . by telephone on October 9, 2020. Social Worker Clyburn discussed the allegations in the Child Protective Services (CPS) report with the father . . . . [Father] reported that he and the mother . . . had followed their service agreement with the Guilford County Department of Health and Human Services, and had done everything that they had been asked to do. [Father] hung up on Social Worker Clyburn three separate times during their conversation on that date. [Father] stated, “he is a man of God, and not to call him again.” [Father] informed Social Worker Clyburn that he would see her in court.

19. On October 12, 2020, a Child and Family Team Meeting was held, and present for the meeting via telephone conference were the following: the mother . . . ; the father . . . ; Facilitator, Terrell Williams, Social Worker Supervisor; and Social Worker, Chelsea Clyburn. During the meeting, the Guilford County Department of Health and Human Services discussed the following concerns: the petition allegations, the family’s prior Child Protection Services (CPS) history, the mother’s ongoing mental health issues, and the parents’ two older children being in the custody of the Department. The father . . . requested that the juvenile, [Brianna], be placed with either [Mother’s] cousin or the paternal grandmother in Salisbury, North Carolina. [Father] argued about the Department’s decision to assume custody of their two older children, [Jason and Betty], and hung up the telephone. The Guilford County Department of Health and Human Services made the decision to file a Juvenile Petition and Nonsecure Custody Order for the juvenile, [Brianna].

...

21. . . . [T]he Guilford County Department of Health and Human Services filed a Termination of Parental Rights (TPR) Petition against the parents . . . on December 9, 2019 as to . . . [Jason and Betty].

...

24. The Guilford County Department of Health and Human Services made reasonable efforts to avoid taking the juvenile into custody to include but was not limited to the following:

- a. Interviews with the parents, relatives, and/or medical professionals;
- b. Requested that the mother enter into a safety agreement;
- c. Requested that the parents identify a Temporary Safety Provider; and
- d. Child and Family Team (CFT) Meeting held on October 12, 2020.

These findings are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

### **C. Challenged Findings**

¶ 11 The parties challenge a number of the trial court's findings in support of the neglect adjudication. We address each finding in turn.

#### **1. Finding of Fact 13**

¶ 12 Father challenges the evidentiary support for the trial court's thirteenth finding of fact. Finding of Fact 13 states:

13. The juvenile, [Brianna], is currently in the custody

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of the Guilford County Department of Health and Human Services pursuant to an Order for Nonsecure Custody and a Juvenile Petition filed on October 12, 2020 at 12:53 p.m., wherein the juvenile was alleged to be dependent and neglected as defined by N.C.G.S. § 7B-101(9) and (15). The alleged issues that led to the juvenile coming into custody with the Guilford County Department of Health and Human Services include but are not limited to the following: the parents have two children already in the custody of the Department; the parents have a pending Termination of Parental Rights (TPR) against them in regard to their two older children; the mother's unmanaged mental health issues; and the father's physical health issues.

¶ 13 Father suggests that this finding merely identifies an allegation rather than stating a fact because of the reference it contains to Brianna being *alleged* to be neglected and dependent. However, assuming Finding of Fact 13 does not state a fact to the extent it references these allegations, the balance of the finding—which is the substance of the finding—is unchallenged on appeal, and therefore binding. Moreover, we hold that competent evidence supported the finding that Brianna was “currently in the custody of the Guilford County Department of Health and Human Services pursuant to an Order for Nonsecure Custody and a Juvenile Petition filed on October 12, 2020 at 12:53 p.m., wherein the juvenile was alleged to be dependent and neglected as defined by N.C.G.S. § 7B-101(9) and (15).”

¶ 14 Social Worker Clyburn testified that after CPS received a report on 9 October 2019 about Mother having given birth to Brianna and concerns regarding Mother's



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mental health, she interviewed Mother at the hospital where Brianna had been born the day beforehand. Social Worker Clyburn testified as follows:

[DHHS:] . . . Did you have an opportunity to interview [Mother] on October 9, 2020?

[SOCIAL WORKER:] Yes, I did, that's correct. I went to the hospital, High Point Regional, to interview her.

[DHHS:] And what was the topic of discussion at that time?

[SOCIAL WORKER:] It was the Department's concerns regarding her mental illness and if she could provide any temporary providers that her child could go home with.

[DHHS:] Did she name anybody?

[SOCIAL WORKER:] Yes, she did. She had named Robin Tony.

[DHHS:] Did she express an understanding of the Department's concerns.

[SOCIAL WORKER:] Yes, she did, that's correct.

[DHHS:] Did she go into any detail about any mental health treatment that she receives?

[SOCIAL WORKER:] She did not go into any detail. I did ask her when her last appointment was, and she stated she wasn't sure.

. . .

[DHHS:] Okay. Was a child and family team meeting held on this case?

[SOCIAL WORKER:] Yes, that's correct.

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[DHHS:] What date was that?

[SOCIAL WORKER:] October 12, 2020.

[DHHS:] And who participated in that meeting?

[SOCIAL WORKER:] I participated, I'm a CPS social worker. My supervisor[,] Cindy Chavis. The facilitator participated, [and] his name is Terrell Williams. And [Father] and [Mother].

[DHHS:] And what was discussed at that time?

[SOCIAL WORKER:] We discussed the Department's concerns regarding the mother's ongoing mental health issues, the previous CPS history of the couple, and how their previous two children are in foster care.

[DHHS:] What did [Father] state about any sort of placement provider?

[SOCIAL WORKER:] At that time he had stated that he wanted Robin Tony still and [the] mother, [Mother].

...

[DHHS:] Okay. Was a – as a result of that child and family team meeting was the decision made to file a petition?

[SOCIAL WORKER:] Yes, that's correct.

[DHHS:] And that petition was filed when?

[SOCIAL WORKER:] On October 12, 2020.

Accordingly, we hold that the challenged portion of Finding of Fact 13 was supported by the evidence, and that its reference to allegations of neglect and dependence reflected that it was a finding as to the existence of allegations, not whether these

allegations had been substantiated.

**2. *Finding of Fact 14***

¶ 15

Respondents both challenge the evidentiary support for Finding of Fact 14. DHHS concedes that there is no record evidence of the specific dates in Finding of Fact 14, and that no party requested judicial notice of these dates. Finding of Fact 14 states:

14. The parents . . . have two other minor children, [Jason] . . . and [Betty] . . . , who are not the subjects of this proceeding. The juvenile, [Jason], is currently in the custody of the Guilford County Department of Health and Human Services pursuant to a Juvenile Petition and Order for Nonsecure Custody filed on December 15, 2017 under Guilford County file number [redacted]. The juvenile, [Jason], was adjudicated neglected in a hearing held on February 8, 2018, with disposition having been entered on that same date. The juvenile, [Betty], is currently in the custody of the Guilford County Department of Health and Human Services pursuant to a Juvenile Petition and Order for Nonsecure Custody filed on November 30, 2018 under Guilford County file number [redacted]. The juvenile, [Betty], was adjudicated to be dependent and neglected in a hearing held on February 7, 2019, with disposition having been entered on March 7, 2019. Subsequently, the Guilford County Department of Health and Human Services filed a Termination of Parental Rights (TPR) Petition against the parents . . . on December 9, 2019, and that petition is scheduled for trial on November 30, 2020.

Although Mother concedes that the evidence supported the portion of this finding related to Betty coming into DHHS custody due to her mental health issues, and that Jason and Betty were still in DHHS custody when Brianna was born, she contends

that there was no evidence submitted supporting the portion of the finding related to the reasons Jason and Betty came into DHHS custody. Father likewise contends that there is no record evidence of any adjudication of Jason or Betty as neglected or dependent, only that they were removed from the home.

¶ 16 Respondents do not challenge the portion of Finding of Fact 14 finding that a termination of parental rights petition concerning Brianna's older siblings had been filed on 9 December 2019, and as noted above, the unchallenged portion of Finding of Fact 13 related to the issues that led to Brianna coming into DHHS custody are binding on appeal. To review, these unchallenged findings were that Brianna came into DHHS custody because (1) both of her older siblings were in DHHS custody; (2) a termination of parental rights petition with respect to the siblings had been filed; (3) Mother was experiencing mental health issues; and (4) Father was experiencing physical health issues. From these findings, taken together with the unchallenged portion of Finding of Fact 14 that a termination of parental rights petition concerning the siblings had been filed on 9 December 2019, it is a reasonable inference that there had been an adjudication of a ground for termination of parental rights such as neglect with respect to Brianna's older siblings. Moreover, to the extent that Finding of Fact 14 was not supported by the evidence, we hold that the error was not necessary to the adjudication and does not constitute reversible error.

### ***3. Finding of Fact 16***

¶ 17 Respondents also challenge the evidentiary support for the trial court’s sixteenth finding of fact. Finding of Fact 16 states:

16. The Guilford County Department of Health and Human Services (GCDHHS) most recently became involved with this family on October 9, 2020, when a Child Protective Services (CPS) report was received which alleged that the mother . . . had given birth to the juvenile, [Brianna], via an emergency caesarean section on October 8, 2020 at Wake Forest Baptist Health – High Point Medical Center. The juvenile, [Brianna], was not staying in the mother’s room, due to the mother’s history of mental illness. The juvenile was in a Level II nursery and was being monitored. The father . . . was at the hospital with the mother . . . and was asking when the mother and juvenile could be discharged. The report alleged that the mother’s recovery time would be longer, due to her having major surgery and possible complications related to her weight. The father . . . was menacing hospital staff and was refusing to wear a mask. The report also alleged concerns regarding the mother’s ongoing mental health issues and that she was taking Haldol during pregnancy. The report further alleged that the mother was seeing Dr. Danielle Adegoroye at RHA Behavioral Health. The mother’s urine drug screen was negative.

¶ 18 Father points out that no evidence was presented at adjudication about him “menacing hospital staff and refusing to wear a mask.” Mother notes that this finding merely recites the allegations in the CPS report that was the impetus for DHHS’s investigation regarding Brianna, but specifically challenges it to the extent it is construed to support the trial court’s ultimate finding regarding a risk of harm to Brianna and the trial court’s adjudication of neglect. We hold that this finding merely

recites the allegations in the CPS report that was the impetus for the DHHS investigation, and that it does not support the trial court's ultimate finding regarding a risk of harm to Brianna, or the trial court's legal conclusion that Brianna was neglected. Because Finding of Fact 16 was not necessary to the adjudication, the absence of record evidence supporting it does not constitute reversible error.

**4. *Finding of Fact 17***

¶ 19 Father challenges the trial court's seventeenth finding of fact. Mother does not challenge this finding.

¶ 20 Finding of Fact 17 states:

17. On October 9, 2020, Social Worker Chelsea Clyburn interviewed the mother . . . at Wake Forest Baptist Health – High Point Medical Center to discuss the allegations in the Child Protective Services (CPS) report. [Mother] provided Social Worker Clyburn with the name of her cousin, Robin Anthony, to be considered as a Temporary Safety Provider (TSP). [Mother] acknowledged to Social Worker Clyburn that she understood the concerns of the Guilford County Department of Health and Human Services. [Mother] reported that she was still receiving treatment at RHA Behavioral Health located in High Point, North Carolina; however, she could not provide Social Worker Clyburn with the date of her last appointment. [Mother] reported that she has followed her service agreement with the Guilford County Department of Health and Human Services. The mother further reported that the father . . . had gone to take care of a traffic citation in Charlotte, North Carolina.

¶ 21 Father does not actually argue that the evidentiary support for this finding

was insufficient, but instead contends that Mother’s inability to give a date could just as easily have been a product of forgetfulness rather an indication of her noncompliance with her mental health treatment. However, it was the trial court’s duty to “pass upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 168-69 (2016) (internal marks and citation omitted). Accordingly, “[t]he trial judge’s decisions as to . . . the inferences drawn from the evidence are not subject to appellate review.” *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020). We therefore decline Father’s invitation to substitute an inference of forgetfulness for one of noncompliance with mental health treatment because this was a decision committed to the trial court as the factfinder.

### **5. *Finding of Fact 20***

¶ 22 Respondents both challenge the evidentiary support for Finding of Fact 20. DHHS concedes that there is no record evidence of the dates in Finding of Fact 20. Finding of Fact 20 states:

20. The parents . . . have two older children, [Jason and Betty], who are in the custody of the Guilford County Department of Health and Human Services pursuant to Juvenile Petitions and Orders for Nonsecure Custody filed on December 15, 2017 . . . for the juvenile, [Jason], and on November 30, 2018 . . . for the juvenile, [Betty]. The juvenile, [Jason] was adjudicated to be neglected in a hearing held on February 8, 2018, and the juvenile, [Betty], was adjudicated to be neglected and dependent in a

hearing held on February 7, 2019. The conditions that led to the juveniles, [Jason and Betty], coming into custody with the Guilford County Department of Health and Human Services include but are not limited to the following:

- The juvenile, [Jason], was in need of medical attention;
- The parents . . . would not agree to take the juvenile, [Jason], to the Emergency Department in High Point, North Carolina, but insisted on traveling on a train back to Salisbury, North Carolina;
- Homelessness;
- Allegations of domestic violence in the presence of the juvenile, [Jason];
- The unmanaged mental health issues of the mother . . . ;
- The juvenile, [Jason], was in the legal custody of the Guilford County Department of Health and Human Services, and the parents had not regained legal custody of that juvenile by the time the juvenile, [Betty], was born.

DHHS also concedes that no evidence supports the second bullet point above—that “[t]he parents . . . would not agree to take the juvenile, [Jason], to the Emergency Department in High Point, North Carolina, but insisted on traveling on a train back to Salisbury, North Carolina[.]”

¶ 23 Mother argues that at most, there was evidence only that Jason and Betty were in DHHS custody because of her mental health issues and that Jason was in DHHS custody at the time Betty was born. Father contends that there is no record evidence to support the portion of Finding of Fact 20 stating that allegations of domestic



violence in Jason's presence were a condition that resulted in Jason coming into DHHS custody.

¶ 24 Social Worker Clyburn testified as follows regarding the conditions that led to Jason coming into DHHS custody:

[DHHS:] Okay. And were you familiar with the circumstances of each of those children coming into custody?

[SOCIAL WORKER:] Yes.

[DHHS:] Specifically for [Jason], what was that?

[SOCIAL WORKER:] Specifically with [Jason], there was a CPS report made around December 15, 2017, that alleged there was an altercation while driving on the interstate, that the infant was in the car, the couple had allegedly been fighting on the side [of] the road when law enforcement was called. It was alleged that [Jason] was filthy, had cradle cap, black stuff in his ears, and he had an odor – the – reportedly (indiscernible) parents were homeless. It alleged that the baby had been outside in the cold with a short sleeved shirt on, a diaper full of urine, and that the child was allegedly sick. There was – there were also allegations of untreated mental health for the mother.

The trial court then sustained an objection to a follow-up question by counsel for DHHS. Social Worker Clyburn went on to testify as follows regarding the conditions that led to Betty coming into DHHS custody:

[DHHS:] Are you aware of the circumstances that [Betty] came into custody?

[SOCIAL WORKER:] Yes.

[DHHS:] All right. Can you tell us about those.

[SOCIAL WORKER:] [Betty] was born and because [Jason] was already in foster care and there were concerns about the consistency with [Mother's] mental health. At that time there had been some issues at the home, there had been some [domestic violence], there had been some – multiple changes in service providers. There had been – she had been arrested for an altercation or something had happened at the apartment. This was while she was pregnant with [Betty] – excuse me – and so going through she wasn't in compliance with her case plan, and there [were] concerns about that. At that time she had not – I don't believe she had completed [the Women's Domestic Violence Intervention Program], and so there [were] some concerns with that.

...

[DHHS:] Okay. Now so far as not being in compliance with their particular case plans, is the – is the mother's mental health component of particular concern?

[SOCIAL WORKER:] It is.

[DHHS:] And why is that?

[SOCIAL WORKER:] [Mother] has been diagnosed with schizophrenia. And in her CCA it's recommended that she have out-patient therapy, peer support services, and medication management.

[DHHS:] Has she been consistent in her compliance with those recommendations or court orders?

[SOCIAL WORKER:] Per her service provider, she has not.

attention; (2) Respondents were allegedly homeless at the time Jason was taken into DHHS custody; (3) there were allegations that Respondents had engaged in domestic violence in Jason's presence before he was taken into DHHS custody; (4) Betty was born while Jason was in DHHS custody; and (5) Mother's mental health issues, combined with the conditions that led to Jason coming into DHHS custody, were the basis for Betty coming into DHHS custody. However, the portions of Finding of Fact 20 related to the adjudications of neglect and neglect and dependence were not supported by record evidence, nor was there any evidence that Respondents "would not agree to take . . . [Jason] to the Emergency Department in High Point, North Carolina, but insisted on traveling on a train back to Salisbury, North Carolina[.]" as DHHS concedes.

¶ 26 We hold that these unsupported portions of Finding of Fact 20 were not necessary to the adjudication, and the absence of evidence supporting them does not constitute reversible error.

### **6. *Finding of Fact 22***

¶ 27 Respondents both challenge the evidentiary support for Finding of Fact 22. Finding of Fact 22 states:

22. The parents . . . have not been compliant with their respective service agreements regarding the juveniles, [Jason and Betty]. The mother . . . has failed to attend mental health appointments and has not been consistent with her mental health treatment. [Mother] was also

receiving individual outpatient therapy at Family Service of the Piedmont; however, a client service history record revealed that [Mother's] last appointment was via telephone conference with therapist, Celenia Martinez-Irizarry on July 10, 2020. Foster Care Social Worker Tania Fox spoke with Ms. Martinez-Irizarry on August 20, 2020, who reported that [Mother's] consistency with treatment had not improved and due to her lack of being engaged in services, Ms. Martinez-Irizarry was no longer recommending outpatient therapy. Ms. Martinez-Irizarry stated that it was not because [Mother] would not benefit from outpatient therapy, but due to her lack of engagement with services. Ms. Martinez-Irizarry stated that her concerns remain for [Mother], but she cannot force the mother to participate in services.

¶ 28 Father argues that the absence of any details in the testimony at adjudication about when Mother last attended an appointment undermines the portion of Finding of Fact 22 related to her noncompliance with mental health treatment and that the portion related to her treatment at Family Service of the Piedmont is unsupported by any of the evidence at adjudication, though evidence supporting this portion of the finding was offered at disposition. Mother likewise argues that the overwhelming majority of Finding of Fact 22 is based on evidence that was offered at disposition, not adjudication. DHHS concedes that all but the first two sentences of Finding of Fact 22 were not supported by the evidence at adjudication.

¶ 29 “In the adjudicatory phase of a hearing to determine if a child is abused or neglected, the petitioner is required to prove allegations of abuse or neglect by clear and convincing evidence, while in the disposition stage the court’s decision as to the

best interests of the child and its placement is discretionary.” *In re O.W.*, 164 N.C. App. 699, 701, 596 S.E.2d 851, 853 (2004) (internal marks and citations omitted). During adjudication, the rules of evidence apply, N.C. Gen. Stat. § 7B-804 (2019), whereas during disposition, they do not, *id.* § 7B-901(a) (“The court may consider any evidence, including hearsay evidence[,]” provided the evidence is “relevant, reliable, and necessary[.]”).

¶ 30 Accordingly, as DHHS essentially concedes, it was improper for the trial court to consider evidence presented at disposition and make the portions of Finding of Fact 22 based on evidence presented at disposition. However, we hold that these unsupported portions of Finding of Fact 22 were not necessary to the adjudication, and the absence of evidence supporting them does not constitute reversible error.

### **7. *Finding of Fact 23***

¶ 31 Respondents also challenge Finding of Fact 23, which states:

23. The parents . . . are residing together with no apparent plan to separate, and their past history of domestic violence, the father’s current displays of anger, and the mother’s lack of current mental health treatment combine to pose a risk of danger of harm to the juvenile, [Brianna].

¶ 32 Mother argues that Finding of Fact 23 is an ultimate finding unsupported by adequate evidentiary findings. Father argues that Finding of Fact 23 is in essence a conclusion of law unsupported by adequate findings of fact. We disagree with both

arguments.

¶ 33 Under the Juvenile Code, “neglected juvenile” is defined to include a juvenile “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[.]” N.C. Gen. Stat. § 7B-101(15) (2019). Even though

[t]he statute is silent on whether the juvenile, to be neglected, must sustain some injury as a consequence of the failure to provide “proper care, supervision, or discipline[.]” . . . this 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 (1993) (internal marks and citation omitted) (emphasis added). “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) (internal marks and citation omitted). Findings related to a substantial risk of future neglect must “suggest that the neglect . . . will be repeated.” *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (2014).

¶ 34 Under § 7B-807(b), “[t]he adjudicatory order shall be in writing and shall contain appropriate findings of fact and conclusions of law.” “[T]he 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 S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 712 (2011) (internal marks and citation omitted). “The findings need to be stated with sufficient specificity in order to allow meaningful appellate review.” *Id.* For example, 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).

¶ 35 The reference to “appropriate findings” in § 7B-807(b) is a reference to ultimate findings of fact, not evidentiary findings of fact. *See In re S.C.R.*, 217 N.C. App. at 168, 718 S.E.2d at 712. “[E]videntiary facts are those subsidiary facts required to prove the ultimate facts.” *Woodard v. Mordecai*, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951). “Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts.” *Appalachian Poster Advert. Co., Inc. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988). In cases involving neglect of a newborn, the trial court must make ultimate findings of fact regarding the statutory grounds alleged in the petition, an “incident or [] series of incidents as a basis for [the] determination of neglect,” *In re T.M.M.*, 167 N.C. App. at 803, 606 S.E.2d at 417, and “a substantial risk of future . . . neglect . . . based on the historical

facts of the case[.]” *In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 698-99, but need not make additional evidentiary findings.

¶ 36 Accordingly, we hold that the trial court did not err by failing to make evidentiary findings in support of Finding of Fact 23. To review, the evidence supported the portions of Finding of Fact 20 finding that (1) Jason was taken into DHHS custody because he needed medical attention; (2) Respondents were allegedly homeless at the time Jason was taken into DHHS custody; (3) there were allegations that Respondents had engaged in domestic violence in Jason’s presence before he was taken into DHHS custody; (4) Betty was born while Jason was in DHHS custody; and (5) Mother’s mental health issues, combined with the conditions that led to Jason coming into DHHS custody, were the basis for Betty coming into DHHS custody. The portion of Finding of Fact 14 related to Brianna’s older siblings coming into and remaining in DHHS custody at the time Brianna was born was likewise supported by the evidence, and the portion of Finding of Fact 14 finding that a termination of parental rights petition concerning the siblings was filed on 9 December 2019 is not challenged on appeal. The portion of Finding of Fact 17 finding that Mother claimed to be receiving mental health treatment at the time Brianna was born but could not remember the date of her last appointment was supported by Social Worker Clyburn’s testimony. Finding of Fact 18 is not challenged, and reflects that Father hung up the phone on Social Worker Clyburn three times on 9 October 2020. Social Worker



Clyburn’s testimony also supported the portion of Finding of Fact 22 finding that Respondents had failed to comply with their respective service agreements with DHHS and that Mother “ha[d] failed to attend mental health appointments and ha[d] not been consistent with her mental health treatment.” Finding of Fact 19 also is not challenged, in which the trial court found that the allegation of neglect of Brianna was discussed with Respondents during a Child and Family Team Meeting on 12 October 2020, along with Respondents’ CPS history, Mother’s ongoing mental health issues, and that Brianna’s older siblings were still in DHHS custody when Brianna was born. During this meeting, which took place telephonically, Father hung up the phone on Social Worker Clyburn again. We hold that together, these findings constituted the ultimate findings regarding the statutory grounds alleged in the petition and “a series of incidents as a basis for [the] determination,” *In re T.M.M.*, 167 N.C. App. at 803, 606 S.E.2d at 417, as well as “a substantial risk of future . . . neglect . . . based on the historical facts of the case[.]” *In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 698-99. These findings therefore constituted sufficient ultimate findings to support Finding of Fact 23, and the court was not required to make additional evidentiary findings in support of Finding of Fact 23.

¶ 37 This holding compels the conclusion that Finding of Fact 23 was not a conclusion of law. While “[t]he classification of a determination as either a finding of fact or a conclusion of law is admittedly difficult[,] . . . [a] determination requiring the

exercise of judgment . . . or the application of legal principles . . . is more properly classified a conclusion of law.” *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal marks and citation omitted). By contrast, “a determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of fact.” *Id.* (internal marks and citation omitted). Accordingly, we hold that the trial court’s finding regarding the substantial risk of future neglect of Brianna expressed in Finding of Fact 23 was “a determination reached through logical reasoning from the evidentiary facts[.]” *not* one “requiring the exercise of judgment . . . or the application of legal principles[.]” *Id.*

#### **D. Legal Arguments**

##### **1. *The Adjudication of Brianna Was Based on More than Respondents’ DHHS History***

¶ 38 Mother argues that the trial court’s adjudication of Brianna as neglected was based entirely on prior DHHS history, which was improper. We disagree.

¶ 39 Mother cites our Supreme Court’s decision in *In re J.A.M.* in support of this argument. There, our Supreme Court observed that “[a] court may not adjudicate a juvenile neglected solely based upon previous Department of Social Services involvement relating to other children.” 372 N.C. at 9, 822 S.E.2d at 698. Instead, “the clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile.” *Id.* However, the trial court’s adjudication of

neglect of Brianna was not based solely on Respondents' history with DHHS, though Respondents' history with DHHS was certainly a relevant consideration.

¶ 40

Mother's oldest child, Jason, was taken into DHHS custody because he needed medical attention and there were allegations Respondents had engaged in domestic violence in his presence and that they were homeless. While Jason was still in DHHS custody, Mother gave birth to a second child, Betty. Mother is schizophrenic. Her mental health issues and the conditions that led to Jason coming into DHHS custody prompted DHHS to investigate and eventually obtain custody of Betty. While Jason and Betty were still in DHHS custody, Mother gave birth to a third child, Brianna. Mother's mental health and Respondents' collective inability to correct the conditions that led to DHHS taking custody of Jason and Betty prompted DHHS to investigate the conditions as they existed in October 2020, when a CPS report was received related to Brianna, which alleged in part that Brianna was not staying in the same room of the hospital as Mother because of Mother's mental health issues even though Brianna was a newborn. At that time, Mother claimed that she was receiving mental health treatment, but could not remember the date of her last appointment. Mother's mental health treatment providers had indicated that she was not compliant with treatment. Father's physical health was also of concern to DHHS, and he had a habit of hanging up the phone on DHHS employees when they attempted to communicate with him about his children. At the hearing on adjudication, during cross-

examination of DHHS's first witness, Father had an angry outburst and accused the witness of lying in open court. Accordingly, we hold that there was "clear and convincing evidence in the record [that] show[ed] current circumstances that present[ed] a risk to the juvenile[.]" *In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 698, namely, that Respondents' "past history of domestic violence, the father's current displays of anger, and the mother's lack of current mental health treatment combine to pose a risk of danger of harm" to Brianna, as the trial court found in Finding of Fact 23.

***2. The Findings Regarding Jason and Betty Were Not Too Vague or Remote to Support the Adjudication of Brianna***

¶ 41 Respondents both argue that the trial court's findings regarding Brianna's older siblings, Jason and Betty, were too vague and remote in time to support the adjudication of Brianna as neglected. We disagree.

¶ 42 Respondents cite our Court's decision in *In re A.K.*, 178 N.C. App. 727, 637 S.E.2d 227 (2006), in support of their argument. There, the trial court took judicial notice of the court orders in a proceeding that resulted in the older sibling of the child at issue being adjudicated neglected and DSS presented no other evidence in support of its allegations that the parents' failure to recognize their culpability for the older sibling's injuries upon which the adjudication of neglect was predicated demonstrated that there was a substantial risk of harm to the younger sibling from continuing to

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reside in the home. *Id.* at 728-29, 637 S.E.2d at 228. We reversed the trial court because no evidence was introduced by DSS at adjudication other than the orders in the case involving the older sibling and the most recent order from the case involving the older sibling was nine months old. *Id.* at 731, 637 S.E.2d at 229. In other words, in *In re A.K.*, there was no “clear and convincing evidence in the record [that] showed current circumstances that present[ed] a risk to the juvenile.” *In re J.A.M.*, 372 N.C. at 9, 822 S.E.2d at 698.

¶ 43 As noted above, however, the record evidence in this case did demonstrate that current circumstances as of 11 November 2020 presented a substantial risk of harm to Brianna. Although the trial court appears to have taken judicial notice of the files in Brianna’s siblings’ cases without doing so expressly, none of the contents of these files are in the record and many of the trial court’s findings based on the contents of these files were erroneous. Nevertheless, we conclude that the portions of the trial court’s findings supported by the evidence, as well as the court’s unchallenged findings, are sufficient in and of themselves to support the adjudication of Brianna as neglected because these findings and the evidence supporting them concerned the conditions that existed on 11 November 2020, the date this matter was heard for adjudication and disposition, and amply supported the court’s ultimate finding regarding the substantial risk of future neglect of Brianna based on the historical facts of the case.

**3. *The Trial Court's Findings Amply Demonstrate a Substantial Risk to Brianna***

¶ 44 Respondents argue that the trial court's findings do not adequately demonstrate that there was a substantial risk of harm to Brianna. Respondents advance essentially three related assertions to support this premise: (1) there was insufficient evidence of domestic violence to support a finding of a substantial risk to Brianna because of domestic violence; (2) the evidence of Father's anger lacks a nexus with any substantial risk to Brianna; and (3) there was insufficient evidence that Mother's mental health issues and noncompliance with treatment created a substantial risk of harm to Brianna. While the first two of these assertions are plausible, and either, standing alone, likely would not have adequately supported a finding regarding a substantial risk of future harm to Brianna, we hold that the evidence of Mother's mental health issues and noncompliance with treatment alone would have sufficed to support the finding as to a substantial risk of future harm. Accordingly, we conclude that the trial court appropriately considered all three issues—domestic violence, Father's displays of anger, and Mother's mental health—together, and that together, the findings related to these issues amply supported the court's finding regarding the substantial risk of future harm to Brianna.

**4. *Identification of Alternative Placements Does Not Render It Impossible to Demonstrate a Substantial Risk of Harm***

¶ 45 Father argues that demonstrating a substantial risk of harm to Brianna was

not possible because Respondents identified potential alternative placements for Brianna and there was no evidence before the trial court at adjudication that these alternative placements would have been unsafe. However, even if Brianna had been placed in one of these alternative placements before adjudication, the issue before the trial court at adjudication would have been Brianna's best interests and "the fitness of the parent to care for the child *at the time of the proceeding.*" *In re K.J.D.*, 203 N.C. App. 653, 660, 692 S.E.2d 437, 443 (2010) (emphasis in original) (citations omitted) (affirming adjudication of neglect where mother failed to correct the conditions that led to her placing the child with maternal grandmother); *In re H.L.*, 256 N.C. App. 450, 457, 807 S.E.2d 685, 690 (2017) (affirming adjudication of neglect where child was placed with her adult sibling and parents did not correct conditions that required the child's safety placement); *In re C.C.*, 260 N.C. App. 182, 193, 817 S.E.2d 894, 901 (2018) (affirming neglect adjudication where conditions leading to child's placement outside of her home were not corrected at the time of the adjudication hearing). Merely identifying an alternative placement does not require DHHS to prove that the alternative placement is unsafe; even if the child is living in the alternative placement at the time of disposition, the question before the court is "the fitness of the parent to care for the child at the time of the proceeding[.]" *In re K.J.D.*, 203 N.C. App. at 660, 692 S.E.2d at 443, not the fitness of the alternative placement.

##### ***5. Termination of Parental Rights***

¶ 46 Father also argues that the primary basis for the adjudication of neglect was Mother’s noncompliance with mental health treatment and the adjudication should therefore be without prejudice to Father in any subsequently filed petition for termination of parental rights concerning Brianna. We note that we have previously held that in adjudication proceedings—in contrast to termination of parental rights proceedings—the trial court is not required to determine the culpability of each parent as to the children. *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007).

The purpose of abuse, neglect and dependency proceedings is for the court to determine whether the juvenile should be adjudicated as having the status of abused, neglected or dependent. . . . The purpose of the adjudication and disposition proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent.

*Id.* As a result, in this case, there was no adjudication of neglect as to a particular parent; there was just an adjudication that the child was neglected.

¶ 47 Further, both our Supreme Court and this Court have previously rejected attempts to link initial adjudication and termination of parental rights orders in such a way as to make the termination of parental rights order dependent on the validity of the initial adjudication order. In *In re R.T.W.*, 359 N.C. 539, 553, 614 S.E.2d 489, 497 (2005), *superseded by statute on other grounds*, 2005 S.L. 398, § 12, for example, the Supreme Court emphasized, in reversing this Court: “Simply put, a termination order rests on its own merits.” *See also In re E.X.J.*, 191 N.C. App. 34, 45, 662 S.E.2d



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24, 30 (2008), *aff'd*, 363 N.C. 9, 672 S.E.2d 19 (2009) (“This Court has . . . held that in these types of proceedings—in contrast to termination of parental rights proceedings—the trial court is not required to determine the culpability of each parent as to the children.”). As a result, the issue of whether and how the status of the child as neglected may impact Father is not yet ripe for review and we dismiss this issue because any determination of the termination of Father’s parental rights is not before us.

**III. Conclusion**

¶ 48 For the reasons stated above, we affirm the order of the trial court and do not reach the issue which is not ripe for appeal.

AFFIRMED IN PART; DISMISSED IN PART.

Judges MURPHY and GRIFFIN concur.

¶ 49 Report per Rule 30(e).