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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-711

No. COA21-397

Filed 21 December 2021

Cabarrus County, No. 21 J.A. 2

IN THE MATTER OF:

C.D.B.

MINOR JUVENILE.

Appeal by Respondent-Mother from order entered 13 April 2021 by Judge Nathaniel M. Knust in Cabarrus County District Court. Heard in the Court of Appeals 1 December 2021.

W. Michael Spivey for Respondent-Appellant Mother.

Hartsell & Williams, PA, by E. Garrison White, for Petitioner-Appellee Cabarrus County Department of Human Services.

S. Wesley Tripp III for guardian ad litem.

GRIFFIN, Judge.

¶ 1

Respondent-Mother (“Mother”) appeals from an order adjudicating her minor child, Carl¹, a neglected juvenile. Mother argues that certain findings of fact made

¹ Pseudonym for ease of reading and to protect the identity of the juvenile. N.C. R. App. P. 42(b).

by the trial court were unsupported by clear and convincing evidence, and that the remaining findings of fact do not support the trial court's conclusion that Carl was a neglected juvenile. We conclude that clear and convincing evidence supports most of the findings of fact, and that those findings of fact support the conclusion that Carl was a neglected juvenile.

I. Factual and Procedural Background

¶ 2 Mother has two children, Carl and Sam². Carl's biological father ("Father") is not the same person as Sam's biological father. Mother's husband is not Carl's biological father and is not involved in Carl's life.

¶ 3 By an order entered 10 June 2020 in Cabarrus County District Court, Sam was adjudicated neglected. The adjudication was based on findings that Mother had abused substances and ignored Sam's medical needs.

¶ 4 An adjudication and disposition hearing for Carl was held remotely in Cabarrus County District Court on 18 March 2021. Counsel for Mother, Father, Guardian Ad Litem ("GAL"), and Petitioner Cabarrus County Department of Human Services ("CCDHS") were present.

¶ 5 CCDHS presented testimony from four witnesses: Terra Williams, Officer Brandon Jones, Robin Fleming, and a laboratory employee. At the adjudicatory

² Pseudonym for ease of reading and to protect the identity of the juvenile. N.C. R. App. P. 42(b).

stage, the trial court admitted into evidence (1) the adjudication and disposition order for Sam, (2) Father’s past citations as prior consistent statements of Officer Jones, (3) records and affidavits relating to Carl’s school attendance, and (4) Mother’s patient records from the Center for Emotional Health.

A. Ms. Williams’ Testimony

¶ 6 Ms. Williams, a social worker who had overseen Sam’s case, testified. Her testimony tended to show the following:

¶ 7 While Ms. Williams oversaw Sam’s case, she had no contact with Father due to his incarceration and “had limited contact with [Mother].” Mother last visited Sam on 12 May 2020. Sam “was adjudicated neglected due to [Mother’s] substance abuse, her lack of parenting skills, . . . [Mother’s] failure to address [Sam’s] medical needs, . . . failure to provide medical care for him, and also failure to protect the child.” She believed that the goal for Sam’s case had been changed to adoption.

B. Officer Jones’s Testimony

¶ 8 Officer Jones, a police officer for the Salisbury Police Department, testified. His testimony tended to show the following:

¶ 9 On the evening of 19 August 2020, Officer Jones was patrolling around Walmart, together with a new officer whom he was field training. Around 7:30 pm, they “rolled through a Murphy’s Express gas station, which is across the street from Walmart.” A woman, later identified as Mother, “came walking across through the

edge of the parking lot[.]” “[I]t seemed like she was in some type of emotional distress for some unknown reason.” The officers initiated a call for a suspicious person and got out of their car. Officer Jones testified that “[a]fter speaking with her, obviously you could tell there was some type of narcotics impairment, some which I believe she said she was coming off of.” Officer Jones suspected the impairment was caused by “Xanax or some other type of downer medication.” Mother told the officers that “she had just gotten into a domestic disturbance with [Father.] . . . She said that he was in the vehicle on the other edge of the parking lot near . . . the pharmacy side of Walmart.” Mother mentioned that her son was with him.

¶ 10 Mother and the officers went to Father and Carl. The officers spoke with Father. “Apparently [Mother and Father] had gotten into a disagreement . . . about some stuff that occurred inside Walmart.” The officers discovered that Father had been charged by Walmart for shoplifting and was not allowed to be on the property, so they started a trespassing enforcement action.

¶ 11 The officers searched the vehicle “due to obvious signs of narcotics usage and also [Mother and Father] admitted to using narcotics.” There were narcotics paraphernalia in the car, “such as baggies and other items” that Officer Jones recognized as indicative of narcotics storage and usage. Officer Jones stated that he did not “know the exact time frame of when they last used, just because it’s been this long since the incident occurred.” He knew “they had mentioned methamphetamines

and also [Mother] had mentioned another downer-type medication.” Father “had admitted to the narcotics usage earlier in the night.”

¶ 12 Based on Mother’s and Father’s “demeanor and their state at the time . . . that [the officers] were speaking with them, there [were] signs showing [impairment.]” Both Mother and Father had “sores on the face and other physical indicators” of methamphetamine usage.

¶ 13 Carl was appropriately clothed for the weather conditions at the time. Officer Jones saw no signs that would indicate Carl was in physical distress. Mother was “the one caring for the child the majority of the time during [their] interaction.” For most of the time, Carl was sitting in a stroller and “keeping to himself.”

¶ 14 After the investigation, Mother “mentioned . . . getting some mental health evaluations from a hospital, during which [Father] became agitated, [and] didn’t want anything to do with the situation.” “[Father] was actually going to leave the child with [the officers] or with [Mother] or at the car because he wanted to say that he was not the child’s father, that he had no responsibilities to the child.” Father changed his mind after the officers told him he would be arrested if he abandoned Carl there. Mother, Father, and Carl got inside their car and left after the officers finished their investigation. Afterwards, the officers contacted “Rowan County DSS . . . about the situation just because of the narcotics usage and the ongoing situation that was going on amongst them while the child was present.”

C. Ms. Fleming’s Testimony

¶ 15 Ms. Fleming, the CCDHS employee who had started Carl’s case, testified. Her testimony tended to show the following:

¶ 16 On 28 August 2020, CCDHS received a CPS report “regarding an injurious environment and substance use during an argument between [Carl’s] parents[.]” Father left Mother and took Carl to Rockwell, North Carolina. “[Father] was arrested for drug possession, and [Carl] was taken by a friend named Sarah.” After the report and a CCDHS investigation, Mother “was able to make contact with Sarah and get [Carl] back.”

¶ 17 On 21 August 2020, Mother and Father tested positive for amphetamine, methamphetamine, and buprenorphine. On 11 September 2020, Mother “was discharged from the program at the Center for Emotional Health for continued drug use.” On 20 September, Mother and Father admitted to CCDHS that they used methamphetamine “at least once a week.” “[O]n September 26th, the family was asked to leave the maternal grandfather’s home where they lived due to [Mother] and [Father] having continued verbal altercations. And at that point, the family became homeless due to the verbal altercations.”

¶ 18 Regarding Carl’s preschool education, “as of September 30th, 2020, [Carl] had already missed 11 days out of 27 days and had not attended any of the Friday remote school sessions even though he had been provided a laptop.” On 23 October 2020,

Mother informed the school “that the family was residing in Salisbury and did not have transportation and that she would enroll the child in a nearby school.” Mother never picked up Carl’s Individualized Education Program (“IEP”) paperwork. Carl was removed from the attendance list on 26 October 2020, “[a]nd he had not been receiving services or help through his IEP for speech.”

¶ 19 After 20 September 2020, CCDHS had limited success with contacting Mother, such that CCDHS “did not know where [Carl] was and anything about [Carl] at that point.” On December 14, Ms. Fleming learned “that [Mother] had left [Father] and . . . returned to maternal grandfather’s home and had a large bruise on the side of her face.” Mother soon returned to Father. After multiple unsuccessful attempts, CCDHS eventually located the family at the maternal grandfather’s house on 5 January 2021.

D. Laboratory Reports and Related Testimony

¶ 20 Drug test results and laboratory reports were admitted as business records, and a laboratory employee testified as to their contents. This evidence showed that on 21 August 2020, Mother and Father tested positive for amphetamines, methamphetamines, and buprenorphine.

E. Mother’s Testimony

¶ 21 Mother testified. Her testimony tended to show the following:

¶ 22 Mother denied that she had ever been homeless, instead saying that she

“always had somewhere to sleep, feed, and bathe [Carl].” After the argument with Father, she stayed with her friends. She could not recall her friends’ address but stated that they lived on Church Street in Salisbury.

¶ 23 Mother did not enroll Carl in another preschool because “it’s hard to enroll him in preschool in the middle of the year.” Mother could not recall the names of the other schools she contacted for Carl’s preschool.

¶ 24 In response to an inquiry about the bruise on her body, Mother replied, “I’ve never had bruises on my body from [Father].” She said that she stayed at her father’s house that night because she had family visiting town.

¶ 25 Mother denied that she ever refused to speak to Ms. Fleming or anyone at CCDHS. She added that “Google deletes emails.”

¶ 26 Mother denied that she had ever left Carl unsupervised with anyone he should not be around. She always saw to Carl’s needs, both emotionally and physically, and he always had shelter to sleep under when with her.

¶ 27 Mother said she had not addressed any of her mental health issues because she did not need mental health treatment. She admitted that she was discharged from the Center for Emotional Health and that she had not addressed her substance abuse issues. She also admitted that she had not completed any of the ordered parenting classes, saying that when she “went to the parenting classes for [Sam], [she] was told that [she] didn’t need them[.]”

F. Father's Testimony

¶ 28 Father testified. He affirmed that he was Carl's father. His testimony tended to show the following:

¶ 29 Regarding the argument near Walmart, Father said that he and Mother "had a little minor disagreement. And it was just a regular argument between a couple. It was nothing major, like [Officer Jones] made it out to be." Father denied that he was under the influence of any substances at that time.

G. Adjudication and Disposition

¶ 30 The court made oral findings in court and adjudicated Carl to be a neglected juvenile. For disposition purposes, the trial court admitted a CCDHS court report.

¶ 31 On 13 April 2021, the trial court entered an order adjudicating Carl to be a neglected juvenile. Mother timely appealed. Father is not a party to this appeal.

II. Analysis

A. Petition for Writ of Certiorari

¶ 32 The certificate of service attached to Mother's Notice of Appeal indicated service only on CCDHS. Mother has submitted a petition for writ of certiorari to request review of this case. Included with the petition are (1) an affidavit from Mother's trial counsel, explaining that the Notice of Appeal inadvertently omitted the certificate of service for GAL's counsel, and (2) documentary evidence supporting that all parties were in fact timely served with the Notice of Appeal. Appellees GAL and

CCDHS do not oppose the petition for writ of certiorari.

¶ 33 “The writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]” N.C. R. App. P. 21. We dismiss the appeal and exercise our discretion to grant Mother’s petition for writ of certiorari and address the merits of Mother’s appeal.

B. Standard of Review

¶ 34 “The role of this Court in reviewing a trial court’s adjudication of neglect . . . is 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 T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (cleaned up)), *aff’d as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008).

¶ 35 If clear and convincing evidence exists to support the findings of fact, “the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary.” *Id.* (citation omitted). “Uncontested findings [of fact] are deemed to be supported by the evidence and are binding on appeal.” *In re J.C.M.J.C.*, 268 N.C. App. 47, 51, 834 S.E.2d 670, 673-74 (2019) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

¶ 36 “The determination that a child is ‘neglected’ is a conclusion of law we review

de novo.” *Id.* at 51, 834 S.E.2d at 674 (citation omitted).

C. Whether Clear and Convincing Evidence Supported the Challenged Findings of Fact.

1. Preliminary Finding of Fact No. 1

¶ 37 In its order, the trial court stated that it “accept[ed] without objection the CCDHS and GAL Court Reports into evidence and incorporated [them] as th[e] [c]ourt’s findings of fact.” Mother argues on appeal that no GAL report was ever offered, and that the CCDHS report was offered and admitted only at the dispositional stage. We agree.

¶ 38 The Record does not reflect that any GAL report was admitted into evidence. The trial transcript indicates that the CCDHS report was offered and admitted only during the dispositional stage of the hearing. Consequently, the CCDHS report could not provide evidentiary support for the adjudicatory findings of fact. *See In re A.W.*, 164 N.C. App. 593, 597, 596 S.E.2d 294, 296-97 (2004) (concluding that a DSS report “not introduced into evidence during the . . . adjudicatory phase” was not clear and convincing evidentiary support for the trial court’s findings of fact).

¶ 39 We conclude that the trial court’s preliminary Finding of Fact No. 1 was not supported by clear and convincing evidence.

2. Preliminary Findings of Fact Nos. 5, 9, and 10

¶ 40 The preliminary Findings of Fact nos. 5, 9, and 10 were related to non-secure custody, and stated the following:

5. The juvenile's return home would be contrary to his health, safety, welfare and best interests and non-secure custody is necessary to protect the juvenile.

...

9. There is a reasonable factual basis to believe that the matters alleged in the petition are true and that the juvenile will not be provided with the adequate supervision or protection by the parent, is/are in need of assistance or placement because the parent is unable to provide for the care or supervision of the juvenile and lack an appropriate alternative care arrangement for the juvenile.

10. There is a reasonable factual basis to believe that no reasonable means other than non-secure custody is available to protect the juvenile.

¶ 41 Mother argues that the above-quoted findings are substantively conclusions of law rather than findings of fact. We agree, and therefore evaluate these findings as if they were conclusions of law. *See In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004) (stating that "if [a] finding of fact is essentially a conclusion of law . . . it will be treated as a conclusion of law which is reviewable on appeal" (citation and internal quotation marks omitted)).

¶ 42 Mother further argues that these findings "do not support the court's conclusion that Carl is neglected." GAL concedes that "the challenged findings in the procedural section of the trial court's order should not be considered to support an adjudication that Carl is a neglected juvenile."

¶ 43 We agree with Mother and GAL. The issue of non-secure custody was not relevant to whether Carl was neglected. We conclude that the preliminary Findings

of Fact nos. 5, 9, and 10 do not support the trial court's conclusion that Carl was a neglected juvenile.

3. Adjudicatory Finding of Fact No. 1

¶ 44 The trial court's first adjudicatory finding of fact stated the following:

1. The allegations contained in the petition support a finding that the juvenile is neglected. The status of the juvenile has been determined to [be] neglected in that the juvenile was involved in an altercation on August 20, 2020 in which the Salisbury Police Department were involved while [] Mother and Father were caring for the child, [] Mother and Father were under the influence of methamphetamines, [] Mother and Father dismissed the educational needs of the child by having the child miss school, the child was in need of medical care, unstable housing of the parties, and [] Mother and Father being subject to domestic violence by [] Mother having bruising and that domestic violence issues that cause the parents to have to leave the home of the maternal grandfather and that the juvenile does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian or caretaker, and the juvenile lives in an environment injurious to the juvenile's welfare.

¶ 45 Mother contests the entire finding as erroneous because the language was allegedly adopted from the DSS petition. We disagree that the finding would be erroneous on that basis. *See In re J.W.*, 241 N.C. App. 44, 48, 772 S.E.2d 249, 253 (2015) (“[I]t is not *per se* reversible error for a trial court's fact findings to mirror the wording of a petition or other pleading prepared by a party.”). Instead, we consider whether the finding was supported by clear and convincing evidence.

¶ 46 Mother challenges as unsupported by evidence the statement that “the juvenile was involved in an altercation on August 20, 2020 in which the Salisbury Police Department were involved while [] Mother and Father were caring for the child[.]” Apart from a minor date error (stating 20 August 2020 rather than the correct date of 19 August 2020), we disagree with Mother’s argument.

¶ 47 Officer Jones’s testimony was clear and convincing evidence in support of this challenged portion of Finding of Fact no. 1. Officer Jones testified that, on 19 August 2020, he and another officer found Mother in “emotional distress”, that Mother told the officers that “she had just gotten into a domestic disturbance with [Father,]” and that Mother mentioned that her son was with Father. Shortly thereafter, the officers spoke with Father, who confirmed that he and Mother “had gotten into a disagreement.” The officers saw Carl there with Mother and Father.

¶ 48 Mother also argues that no competent evidence supports that “Mother and Father were under the influence of methamphetamines” during this incident. We disagree.

¶ 49 Officer Jones’s testimony and the laboratory reports were clear and convincing evidence that Mother and Father were under the influence of methamphetamines during the 19 August 2020 incident. Officer Jones stated that he did not “know the exact time frame of when they last used” but that Mother and Father “had mentioned methamphetamines” and had “sores on the face and other physical indicators” of

methamphetamine usage. Soon afterwards, on 21 August 2020, Mother and Father tested positive for amphetamines, methamphetamines, and buprenorphine.

¶ 50 Mother additionally argues that no competent evidence supports that “Mother and Father dismissed the educational needs of the child by having the child miss school[.]” We disagree.

¶ 51 Ms. Fleming’s testimony, Carl’s school records, and Mother’s testimony were clear and convincing evidence that Mother had Carl miss school and did not meet his educational needs. Mother enrolled Carl in preschool, but “as of September 30th, 2020, [Carl] had already missed 11 days out of 27 days and had not attended any of the Friday remote school sessions even though he had been provided a laptop.” Carl was removed from the attendance list on 26 October 2020. Mother admitted that she did not enroll Carl in another preschool. Carl had an IEP for speech, but he did not receive those services and Mother never picked up Carl’s IEP paperwork.

¶ 52 Mother argues, and GAL concedes, that there was no evidence presented at the adjudicatory hearing that Carl “was in need of medical care[.]” We agree. Our review of the Record revealed no evidence tending to show Carl needed any medical care that was not provided to him.

¶ 53 Finally, Mother argues that evidence did not support the trial court’s finding that the parties had “unstable housing” and that “Mother and Father [were] being subject to domestic violence by [] Mother having bruising and that [there were]

domestic violence issues that cause[d] the parents to have to leave the home of the maternal grandfather[.]” We disagree.

¶ 54 Ms. Fleming’s testimony was clear and convincing evidence that Mother and Father had unstable housing, and that Mother was subject to domestic violence. Ms. Fleming testified that “the family was asked to leave the maternal grandfather’s home where they lived due to [Mother] and [Father] having continued verbal altercations” and that they became homeless as a result. Ms. Fleming testified that after 20 September 2020, CCDHS had limited success with contacting Mother, such that “we still did not know where [Carl] was and anything about [Carl] at that point.” Eventually Ms. Fleming learned “that [Mother] had left [Father] and . . . returned to maternal grandfather’s home and had a large bruise on the side of her face.”

¶ 55 Although Mother also testified that she was never homeless and never had any bruises from Father, this portion of the challenged finding of fact is binding based on its clear and convincing evidentiary support, despite “evidence [that] would support a finding to the contrary.” *In re T.H.T.*, 185 N.C. App. at 343, 648 S.E.2d at 523 (citation omitted).

4. Adjudicatory Findings of Fact Nos. 2, 3, 4, and 10

¶ 56 The court made the following adjudicatory findings of fact related to CPS reports about Carl and Sam:

2. On October 24, 2019, November 12, 2019, and November

15, 2019, CCDHS received child protection services (“CPS”) reports alleging concerns for [Sam]. The concerns were related to improper care and improper medical/remedial care. This case was found in need of services and [Sam] was placed in foster care.

3. On May 22, 2020, CCDHS received a CPS report alleging concerns of neglect for [Carl] regarding improper supervision. This case was closed with services recommended.

4. On June 13, 2020, CCDHS received a CPS report alleging concerns of [Carl] regarding improper care, improper medical/remedial care. This case was closed with services recommended.

...

10. On August 28, 2020, CCDHS received another CPS report regarding injurious environment and substance use. The report stated that during an argument in Albemarle, NC, [Father] left [Mother] and took [Carl] to Rockwell, NC and that [Father] was arrested for drug possession and [Carl] was taken by a friend named Sara. [Mother] contacted DSS because [Mother] thought Rowan County Department of Social Services had [Carl] and [Mother] did not know where the child was. [Mother] stated that she knew Sara, but Sara would not return her calls and she did not know where [Carl] was.

¶ 57 Mother argues these are not “true” findings of fact. Mother does not cite authority for what constitutes a “true” finding of fact. However, we conclude that these findings were supported by clear and convincing evidence.

¶ 58 A 10 June 2020 order and Ms. Fleming’s testimony were clear and convincing evidence in support of these findings. The 10 June 2020 order adjudicated Sam neglected and placed him into foster care. The order included findings of fact that

CCDHS received reports concerning Sam on 24 October 2019, 12 November 2019, and 15 November 2019, and that these reports alleged concerns relating to improper care and improper medical care. Ms. Fleming testified that CCDHS received reports concerning Carl on 22 May 2020, 13 June 2020, and 28 August 2020. She also testified that the reports alleged, respectively, (1) “neglect of [Carl] regarding improper supervision with findings of services recommended”, (2) “improper care, improper medical – or remedial care and finding of services recommended”, and (3) “an injurious environment and substance use during an argument between the parents in Albemarle, North Carolina.”

¶ 59 Ms. Fleming’s description of the events alleged in the 28 August 2020 report was consistent with Finding of Fact no. 10: she stated that Father and Mother argued in Albemarle; Father left Mother and took Carl to Rockwell; Father was arrested for drug possession; a friend named Sarah took Carl; and Mother contacted CCDHS because she could not find Carl and did not know where he was, but thought he was with CCDHS, and Sarah was not returning her calls.

5. Adjudicatory Finding of Fact No. 5

¶ 60 The trial court’s adjudicatory Finding of Fact no. 5 concerned the 19 August 2020 incident near Walmart, and stated the following:

5. On August 19, 2020, CCDHS received another CPS report regarding injurious environment and substance use. The reported [sic] stated that [Mother] was found walking

in Salisbury, NC and that law enforcement stopped to check on [Mother] as she looked shaken. The report stated that [Mother] advised law enforcement that she had been arguing with her boyfriend, [Father], and that [Mother] stated that she had been clean from heroin for 4 years but had recently started using methamphetamines. [Mother] stated that she last “used” three days ago, and that [Mother] stated that she was prescribed Suboxone. The report stated that law enforcement found [Father] and [Mother], in a car with [Carl] in a Walmart parking lot and that [Father] and [Mother] gave conflicting stories and appeared to be hiding something. [Father] and [Mother] refused a search of their car and that [Father] admitted to using methamphetamines three days ago and said he was taking Suboxone, but he did not have a prescription. [Mother] reported that [s]he wanted to be taken to [the] emergency room for a possible involuntary commitment and that [Father] then also wanted to go to [the] emergency room and told law enforcement that DSS can come and take their son. After finding out that they would be charged for not making a plan for their son, the parents no longer wanted to go to [the] emergency room. Law enforcement reported that [Carl] looked fine, but law enforcement was concerned about both parents using drugs while caring for the child.

¶ 61 Mother objected to Ms. Fleming’s testimony concerning the contents of the 19 August 2020 CCDHS report, and the trial court ruled that the testimony would only be used for corroboration and not for substantive purposes. We agree that Ms. Fleming’s testimony concerning the contents of the report is not competent to support the trial court’s findings of fact. *See In re Lucas*, 94 N.C. App. 442, 450, 380 S.E.2d 563, 568 (1989) (holding that certain evidence was admissible for corroborative purposes but was “inadmissible for substantive purposes” (citation omitted)). The

report itself was not admitted into evidence. Finding of Fact no. 5 was unsupported by clear and convincing evidence to the extent that it found as fact the contents of the 19 August 2020 CCDHS report.

6. *Adjudicatory Finding of Fact No. 7*

¶ 62 Mother challenges, as unsupported by evidence, the portion of Finding of Fact no. 7 that found that Father “was slurring his words” during the incident in the parking lot. We agree; our review of the Record reveals no support for the statement that Father “was slurring his words.”

¶ 63 Mother also argues that the court’s finding that Mother and Father “admit[ted] to using methamphetamine” was not supported by “evidence to the extent it is intended to suggest or establish that the parents were using or had recently used methamphetamine.” We disagree.

¶ 64 Officer Jones’s testimony was clear and competent evidence that Mother and Father admitted to using methamphetamines and that they were using, or had recently used, methamphetamine. Officer Jones testified that, in addition to Mother and Father’s admission “to using narcotics[,]” “they had mentioned methamphetamines and also [Mother] had mentioned another downer-type medication.” Officer Jones observed that Mother and Father had “sores on the face and other physical indicators” of methamphetamine usage. Their car contained

narcotics paraphernalia that Officer Jones recognized as indicative of narcotics storage and usage.

¶ 65 Mother is correct in pointing out that Officer Jones testified that he did not “know the exact time frame of when they last used[.]” However, the trial court did not find as fact an exact time frame of Mother’s and Father’s last methamphetamine use. Officer Jones’s testimony was sufficient to establish that Mother and Father had recently used methamphetamines at the time of the 19 August 2020 incident. In addition, Mother and Father tested positive for methamphetamines shortly afterwards on 21 August 2020. There was clear and convincing evidence that, during the 19 August 2020 incident in which Carl was present, Mother and Father had recently used methamphetamines.

7. Adjudicatory Findings of Fact Nos. 18-20

¶ 66 The trial court made the following findings of fact concerning Mother’s youngest child, Sam:

18. On November 15, 2019, a non-secure order for custody was filed regarding [Mother’s] other child. The [c]ourt adjudicated that child neglected. On or about October 22, 2020, the [c]ourt found that adequate progress has not been made under the case plan within a reasonable period of time, was not actively participating in or cooperating with the plan, CCDHS, and [] GAL, was not remaining available to the Court, CCDHS and GAL and is not acting in a manner that is consistent with [] [M]other’s child’s health or safety and that efforts to reunite that child with [] [M]other would clearly be unsuccessful or inconsistent with

the child's safety and need for a safe, permanent home within a reasonable period of time[.]

19. [Sam's] goal was changed to adoption due to Mother's lack of involvement in this case. The last time [] Mother sa[w] the juvenile was in May 2020. [Sam] was adjudicated neglected due to [Mother's] substance abuse, lack of parenting skills, and [Mother's] failure to address [Sam's] medical needs and failure to provide medical care and failure to protect the child.

20. At this time [Mother], [Mother's husband] and [Father] have failed to alleviate issues that caused the removal of [Carl's] sibling. [Carl] lives in a home where other children have been subjected to abuse or neglect by an adult who regularly lives in the home.

¶ 67 Mother challenges these findings as unsupported by evidence. We agree in part and disagree in part.

¶ 68 The 10 June 2020 order for Sam was clear and convincing evidence supporting most of Finding of Fact no. 18. The order found that (1) a non-secure custody order was filed for Sam on 15 November 2019 and that (2) Sam was adjudicated neglected.

¶ 69 Ms. Williams's testimony, and the 10 June 2020 order for Sam, supported the majority of Finding of Fact no. 19. Ms. Williams testified that she believed Sam's case "was changed . . . at one of our hearings to adoption" and that Mother last saw Sam on 12 May 2020. The 10 June 2020 order concerning Sam found facts relating to Mother's history of substance abuse, Mother's failure to provide for Sam's medical

needs, and Mother's failure to provide proper care and supervision to Sam. There was clear and convincing evidence to support most of Finding of Fact no. 19.

¶ 70 However, in regard to Findings of Fact nos. 18 and 19, our review of the Record did not yield competent support for the trial court's findings as to why there was inadequate progress on Sam's case as of 22 October 2020, or for the finding that Mother's alleged "lack of involvement" was the reason why the goal was changed to adoption. Only the CCDHS court report contained this information. As discussed *supra*, the CCDHS court report was inadmissible for substantive purposes, and was therefore not competent support for findings of fact.

¶ 71 Mother's and Ms. Fleming's testimonies were clear and convincing evidence in support of the challenged portion of Finding of Fact No. 20. Mother testified that she never addressed her mental health issues, was discharged from her drug treatment program, had not addressed her substance abuse issues, and had not completed the parenting classes as she was ordered. Ms. Fleming testified that on 11 September 2020, Mother was discharged from the Center for Emotional Health due to "continued drug use." Ms. Fleming further testified that on 20 September 2020, Mother and Father "admitted to using methamphetamine at least once a week."

¶ 72 On appeal, Mother does not challenge the portion of Finding of Fact No. 20 indicating that "[Carl] lives in a home where other children have been subjected to abuse or neglect by an adult who regularly lives in the home."

D. Whether the Findings of Fact Supported the Conclusion that Carl Was a Neglected Juvenile.

¶ 73 Mother argues that the trial court’s supported findings of fact do not support the conclusion that Carl was a neglected juvenile. We disagree.

¶ 74 The North Carolina Juvenile Code defines, in pertinent part, a neglected juvenile as follows:

Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare[.]

N.C. Gen. Stat. § 7B-101(15) (2019). “In order to adjudicate a child to be neglected, the failure to provide proper care, supervision, or discipline must result in some type of physical, mental, or emotional impairment or a substantial risk of such impairment.” *In re K.J.B.*, 248 N.C. App. 352, 354, 797 S.E.2d 516, 518 (2016) (internal quotation marks and citations omitted).

¶ 75 The trial court’s supported findings of fact show that Mother engaged in “a pattern of conduct . . . potentially causing injury to” Carl. *See In re J.R.*, 243 N.C. App. 309, 315, 778 S.E.2d 441, 445 (2015) (“[P]arental behavior constituting ‘neglect’ [is] ‘either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile.’” (quoting *In re Stumbo*, 357 N.C. 279,

283, 582 S.E.2d 255, 258 (2003))). Mother abused illegal substances (at one point admitting to using methamphetamine at least once a week) and was discharged from the Center for Emotional Health due to her continued drug use. *See In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 781 (2009) (“[C]onduct that supports a conclusion that a child is neglected includes . . . abuse of illegal substances[.]” (citation omitted)). Mother was subject to domestic violence, experienced unstable housing, and was found to lack parenting skills in Sam’s case. *See In re K.D.*, 178 N.C. App. 322, 329, 631 S.E.2d 150, 155 (2006) (reasoning that the mother’s “struggles with parenting skills, domestic violence, and anger management, as well as her unstable housing situation, have the potential to significantly impact her ability to provide ‘proper care, supervision, or discipline’” (citation omitted)). Mother dismissed Carl’s education despite his need for an IEP. *See In re Devone*, 86 N.C. App. 57, 60, 356 S.E.2d 389, 391 (1987) (affirming that a child was neglected because his parent withdrew him from public school and taught him at home without resources to address the child’s special needs).

¶ 76 Mother’s neglect of her youngest child, Sam, further supported a conclusion that Carl was neglected. “In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.” N.C. Gen. Stat. § 7B-101(15). Although prior neglect of another child “standing alone, is

not sufficient to support an adjudication of neglect[,]” here, as discussed *supra*, there were “other factors to suggest that the neglect or abuse will be repeated.” *In re J.C.B.*, 233 N.C. App. 641, 644, 757 S.E.2d 487, 489 (2014) (citations and quotation marks omitted). Mother’s failure to address the issues that caused Sam’s removal indicates a likelihood that she will continue to neglect Carl in the future. *See In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020) (“A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” (citation and internal quotation marks omitted)).

¶ 77 Mother cites *In re K.J.B.*, 248 N.C. App. 352, 797 S.E.2d 516 and *In re E.P.*, 183 N.C. App. 301, 645 S.E.2d 772, *aff’d per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007), to support her argument that the trial court’s findings of fact do not support a conclusion that Carl was neglected. Both cases are distinguishable from this matter.

¶ 78 The trial court in *In re E.P.* found that the only evidence allegedly demonstrating neglect was that the parents abused substances and that there was possibly domestic violence “of a minor nature” between the parents. 183 N.C. App. at 303-05, 797 S.E.2d at 773-75 (affirming dismissal of the Department of Social Services’ petition). Here, by contrast, there was ample evidence of facts apart from Mother’s substance abuse supporting a conclusion that Carl was neglected.

¶ 79 In *In re K.J.B.*, the evidence showed that the child was left with a babysitter

during the reported incident where the parents abused alcohol. 83 N.C. App. at 352-53, 356, 797 S.E.2d at 517, 519. This Court reversed the trial court's adjudication of the child to be a neglected juvenile, reasoning that "there [was] no substantial evidence to show [the child] suffered any physical, mental, or emotional impairment, or that he was at a substantial risk of suffering such impairment, as the result of [the mother's] substance abuse." *Id.* at 356-57, 797 S.E.2d at 519. Here, on the contrary, the trial court found that Mother and Father were under the influence of methamphetamines while caring for Carl.

¶ 80 Although it does not appear based on the Record that Carl was actually harmed, the trial court's factual findings make it clear that Carl was subject to a substantial risk of harm. "It is well-established that the trial court need not wait for actual harm to occur to the child if there is a substantial risk of harm to the child in the home." *In re T.S., III*, 178 N.C. App. 110, 113, 631 S.E.2d 19, 22 (2006), *aff'd*, 361 N.C. 231, 641 S.E.2d 302 (2007). The trial court's supported findings of fact show that Carl was subjected to "a substantial risk of [physical, mental, or emotional] impairment" from Mother's neglect. *In re K.J.B.*, 83 N.C. App. at 354, 797 S.E.2d at 518 (internal quotation marks and citations omitted).

III. Conclusion

¶ 81 For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

IN RE: C.D.B.

2021-NCCOA-711

Opinion of the Court

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).