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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-818

Filed 01 August 2023

Lenoir County, Nos. 21JA94, 21JA95, 21JA96

IN THE MATTER OF:

L.S.

W.S., Jr.

D.S.

Appeal by respondent-mother from orders entered 20 May 2022 by Judge Beth Heath in Lenoir County District Court. Heard in the Court of Appeals 6 June 2023.

Anné C. Wright for respondent-appellant-mother.

Robert W. Griffin for petitioner-appellee Lenoir County Department of Social Services.

Matthew D. Wunsche and Brittany T. McKinney for appellee Guardian ad Litem.

GORE, Judge.

On 28 May 2021, the Lenoir County Department of Social Services (“DSS”) received a report that “stepfather” sexually abused his sixteen-year-old stepdaughter,

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L.S. (“Lucy”), on multiple occasions.¹ On some occasions, stepfather sexually abused Lucy while Lucy’s younger siblings, D.S. (“Daisy”) and W.S. (“Walt”), were present in the home. Lucy eventually left her home due to the sexual abuse.

On 22 November 2021, DSS filed three petitions alleging Lucy was abused and neglected, and that Daisy and Walt were neglected. Following adjudication hearings in the first and second weeks of April 2022, the trial court adjudicated Lucy as abused and neglected, and Walt and Daisy as neglected. Respondent-mother timely filed notice of appeal from the trial court’s adjudication judgment and dispositional orders filed 20 May 2022.

This Court has jurisdiction pursuant to N.C. Gen. Stat. sections 7A-27(b) and 7B-1001(a)(3).

I.

Respondent-mother raises one issue on appeal: whether the trial court properly adjudicated Walt and Daisy neglected based on the substantial risk of harm they faced in respondent-mother’s care. Respondent-mother contends the trial court’s conclusion that Walt and Daisy were neglected juveniles is not supported by sufficient findings of fact where the only competent findings were that Walt and Daisy were in the home when Lucy was abused, and that Daisy was close to the same age Lucy was when Lucy’s abuse began. Upon review, we affirm the trial court’s order.

¹ Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

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II.

The allegations in a petition alleging abuse, neglect, or dependency shall be proved by clear and convincing evidence. The role of this Court in reviewing a trial court's adjudication of neglect and abuse 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. If such evidence exists, the findings of the trial court are binding on appeal, even if the evidence would support a finding to the contrary. The trial court determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, the trial court alone determines which inferences to draw and which to reject.

In re T.H.T., 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (cleaned up).

III.

Under the Juvenile Code, a neglected juvenile is:

(15) Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does any of the following:

a. Does not provide proper care, supervision, or discipline.

...

e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.

...

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) (2022). "[I]n concluding that a juvenile 'lives in an

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environment injurious to the juvenile's welfare,' the clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile." *In re J.A.M.*, 372 N.C. 1, 9, 822 S.E.2d 693, 698 (2019) (internal citation omitted).

"In determining whether a child is neglected based upon the abuse or neglect of a sibling, '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 D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 780 (2009) (citation omitted).

The fact of prior abuse, standing alone, however, is not sufficient to support an adjudication of neglect. Instead, this Court has generally required the presence of other factors to suggest that the neglect or abuse will be repeated. These factors include the presence of domestic violence in the home and current and ongoing substance abuse issues, unwillingness to engage in recommended services or work with or communicate with DSS regarding prior abuse and neglect, and failing to accept responsibility for prior adjudications.

In re J.C., 283 N.C. App. 486, 494-95, 873 S.E.2d 757, 763-64 (2022) (cleaned up).

Respondent-mother challenges the trial court's findings of fact 11(b)(x) and a portion of finding 13 as unsupported by competent evidence:

11(b)(x): [Daisy] and [Walt] were neglected in that they remained in a home where their sister was being sexually abused. [Daisy] is close to the same age that [Lucy] was when [Lucy] stated the sexual abuse started. [Walt] was also neglected in that [stepfather] and [respondent-mother] provided him with marijuana and used it with him.

13: . . . The juveniles [Walt] and [Daisy]'s parent, guardian, custodian, or caretaker created or allowed to be created a living environment that was injurious to the juveniles'

welfare.

Portions of the trial court's findings that Daisy and Walt were neglected and lived in an environment injurious to their welfare are more appropriately characterized as conclusions of law. *See In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999) ("Whether a child is 'neglected' is a conclusion of law which must be supported by adequate findings of fact."). "If a contested 'finding' is more accurately characterized as a conclusion of law, we simply apply the appropriate standard of review and determine whether the remaining facts found by the court support the conclusion." *In re B.W.*, 190 N.C. App. 328, 335, 665 S.E.2d 462, 467 (2008) (citation omitted).

First, we note respondent-mother does not challenge the factual substance of the finding that "[Daisy] is close to the same age that [Lucy] was when [Lucy] stated the sexual abuse started." Respondent-mother instead contends this fact alone does not support the adjudication of Daisy as neglected. To the contrary, "[s]ection 7B-101(15) affords the trial court some discretion in determining whether children are at risk for a particular kind of harm given their *age and the environment* in which they reside." *In re A.L.T.*, 241 N.C. App. 443, 451, 774 S.E.2d 316, 321 (2015) (emphasis added) (citation omitted). The finding that Daisy is approximately the same age as Lucy when stepfather began sexually abusing Lucy is relevant for the purposes of assessing neglect, harm, and risk when taken in combination with the following unchallenged findings of fact 11(b)(i)-(ix):

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i. [Lucy] has made consistent disclosures to the Department, Child Medical Examiner, and Child Family provider that her step-father, . . . sexually abused her. . . . [Walt] and sister [Daisy], were home when stepfather sexually abused [Lucy]. . . .

. . .

iii. . . . This sexual abuse has occurred and continued since [Lucy] was around 12 years old.

iv. [N.P.], biological daughter of [stepfather], saw [Lucy] and [stepfather] kissing each other's necks and [Lucy] sitting on [stepfather's] lap. [N.P.'s] mother . . . saw the same incident when [Lucy] was about 12 years old.

v. [Stepfather] installed cameras in the family's home including in [Lucy's] bedroom. [Stepfather] used the cameras to watch her undress and to make her do things he wanted her to do. When [Stepfather] turned the camera on, a light would come on that she could see.

vi. [Lucy] tried to tell her mother when [stepfather] first started touching her. Her mother discussed the issue with [stepfather]. [Stepfather] denied touching [Lucy] to [respondent-mother].

vii. [Respondent-mother] referred to [Lucy] as a "homewrecking whore" to Leanna Stone.

viii. [Stepfather] and [respondent-mother] provided marijuana to [Lucy] and used it with her. . . .

ix. [Lucy] has been sexually abused by [stepfather]. [Lucy] has also been neglected by not receiving proper care in a safe home, as evidenced by . . . [respondent-mother] allowing [stepfather] to remain in the home with [Lucy].

These unchallenged, and therefore binding findings of fact, indicate that respondent-mother not only failed to acknowledge Lucy's allegations that stepfather

had sexually abused Lucy, but also that respondent-mother blamed Lucy for the family's situation by referring to Lucy as a "homewrecking whore." Respondent-mother's refusal to believe Lucy's disclosure of sexual abuse, decision to believe stepfather's narrative, and decision to allow stepfather to remain in the home with Lucy are all additional factors relevant to assessing injurious environment and risk of neglect as to Daisy. *See In re S.M.L.*, 272 N.C. App. 499, 517, 846 S.E.2d 790, 802 (2020).

Respondent-mother also challenges a factual portion of finding of fact 11(b)(x), which found that stepfather and respondent-mother provided Walt with marijuana and used it with him.

During the adjudication hearing, N.P., stepfather's fourteen-year-old daughter, testified she knew what marijuana smells like "[b]ecause [she's] been around [her] dad when he smokes it[,]" and "[h]e's been smoking it all [her] life." She testified that she could smell marijuana inside of respondent-mother and stepfather's house on multiple occasions. When asked who was present in the bedroom while stepfather and respondent-mother smoked marijuana, N.P. identified Lucy and stated, "I think [Walt] would be a couple of times."

Considering the trial court is in the best position to weigh the evidence and assess the credibility of the witnesses, a finding that "[stepfather] and [respondent-mother] provided [Walt] with marijuana and used it with him" is a reasonable inference drawn from N.P.'s testimony. Findings of fact that respondent-mother and

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stepfather were regularly offering marijuana to children in and out of the home, and smoking marijuana with some of the children, are relevant in assessing whether Walt and Daisy live in an injurious environment. This finding remains undisturbed on appeal.

The unchallenged findings, along with the supported findings, support the trial court's order adjudicating Walt and Daisy as neglected.

IV.

For the foregoing reasons, we affirm the trial court's adjudication of Daisy and Walt as neglected juveniles, and Lucy as an abused and neglected juvenile.

AFFIRMED.

Judges CARPENTER and RIGGS concur.

Report per Rule 30(e).