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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-861

Filed 18 July 2023

Guilford County, Nos. 21 JA 402-04

IN THE MATTER OF: E.J-K., E.J-K., E.J-K.

Appeal by Respondent Father from orders entered 7 June 2022 and 1 August 2022 by Judge William B. Davis in Guilford County District Court. Heard in the Court of Appeals 10 May 2023.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Mary McCullers Reece for respondent-appellant father.

Robert C. Montgomery for guardian ad litem.

MURPHY, Judge.

When a parent challenges specific findings of fact in an adjudication order, we may still affirm if our *de novo* review indicates the unchallenged findings of fact support the adjudications. Father challenges the admissibility of hearsay statements that the children made to a forensic interviewer and argues that improperly admitting those statements prejudiced him in the adjudication hearing. However, the unchallenged findings of fact still support the adjudications of neglect and

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dependency, so we need not address the admissibility of the hearsay. We affirm the adjudications of neglect and dependency.

BACKGROUND

Father appeals an order adjudicating his minor children Felix, Chantal, and Hugo¹ neglected and dependent. The children’s mother was also a respondent in the action below, but is not a party to this appeal. At the time of this action, Father and Mother had custody of their own three children as well as Jerry² (age two), another child in the home.

On 20 September 2020, the Guilford County Department of Health and Human Services (“DHHS”) received a report pertaining only to Jerry, which alleged physical abuse and substance abuse by the adults in the home. Jerry had, at different medical appointments, a post-traumatic nose deformity, lacerations on his face, a healing femur fracture, a healing radius fracture, more than ten bruises, and a black eye. Mother’s explanation for these injuries was that Jerry climbed out of his crib and fell daily; that he had twice-daily temper tantrums in which he banged his head; and that her youngest son, Hugo, bullied and hit Jerry. Jerry was also underweight while in the home—in the 11th and 7th percentiles in February 2020 and September 2020, respectively.

¹ We use pseudonyms to protect the juveniles’ identities and for ease of reading.

² We use a pseudonym to protect the juvenile’s identity and for ease of reading.

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On 22 September 2020, Father and Mother attended a Child and Family Team Meeting, during which they stated they could not prevent Hugo from bullying Jerry. Mother stated that she uses her hand to spank the kids and “tries to avoid the head.” Father and Mother admitted to having marijuana in their home but claimed that it belonged to Mother’s cousin. Mother also admitted to smoking marijuana twice a day and using methamphetamine; although she used both outside her home, she left the children unsupervised inside the home while she did so. Mother stated that she was diagnosed with bipolar disorder and depression years before but had not received treatment.

At the close of this meeting, DHHS placed Felix, Chantal, and Hugo with their paternal grandmother and put supervision restrictions on the parents’ contact with the children. Jerry was placed with other appropriate family members. DHHS requested drug screens from each of the parents, but neither parent complied for over a month.

On 25 September 2020, Nurse Practitioner (“NP”) Natalie Watt completed Child Medical Evaluations (“CME”) on Felix, Chantal, and Hugo at the Greensboro Child Advocacy Center. These CMEs consisted of an interview by a forensic interviewer, immediately followed by a physical examination by NP Watt. NP Watt also gathered information from DHHS, Mother, law enforcement, and medical records to write a comprehensive report.

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During the CME physical examinations, NP Watt discovered that Felix had scars on his chest, arm, and back; Felix could explain some but not all of them, which concerned NP Watt. Chantal described chest pressure and pain, which she called “heartaches,” and this “was very concerning to [NP Watt], especially [in] someone who is so young.” Chantal also had a foot injury that had been unaddressed for two months; Mother knew about this and had not sought medical treatment. Hugo had dental cavities and scars on his back, which he could not explain. Additionally, none of the children were presented for a well-child check in over two years, which put Hugo behind on his routine vaccines.

NP Watt diagnosed all of the children with medical neglect based on their unattended medical needs, in addition to domestic violence exposure, drug/weapon endangerment, and a high concern for physical abuse.

On 28 September 2020, Grandmother violated the terms of the safety plan by leaving the three children at home with Father and Mother unsupervised. DHHS asked Father and Mother to procure a backup placement for the children, but they were unable to find someone willing to be a backup caregiver and the children remained with Grandmother.

On 2 October 2020, Mother was charged with felony child abuse as to Jerry. The terms of her pretrial release prohibited her from having contact with any child under the age of 18, including her own children.

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In late October 2020, Father completed a negative drug screen and a substance abuse assessment and mental health evaluation. Father was diagnosed with mild Cannabis Use Disorder, and he had no mental health diagnoses. He did not participate in the recommended outpatient treatment. In late October 2020, Mother produced a drug screen positive for marijuana, and she too submitted to a substance abuse assessment and mental health evaluation. Mother was diagnosed with moderate Cannabis Use Disorder, bipolar disorder, and depression, but she did not attend treatment for any of the three diagnoses. During her evaluation, Mother appeared to be impaired and admitted that she had used marijuana that morning.

On 30 October 2020, Dr. Samantha Schilling completed a CME on Jerry in which she diagnosed him with physical abuse and neglect. The CME revealed that Jerry's injuries were not consistent with Father's and Mother's explanations. Dr. Schilling explained, in particular, that there was no medical explanation as to why Jerry had fractures, and a "child with a femur fracture would be non-ambulatory, . . . in pain every time their diaper or clothes were changed." Given his fractures, the trial court found it was "not reasonable that a caregiver would not notice . . . and not seek medical care for [Jerry]."

On 4 December 2020, Father and Mother were charged with misdemeanor child abuse of Felix and felony child neglect and child abuse of Chantal. As a result of these charges, Father and Mother's pretrial release conditions prohibited them

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from having any contact with any children under 18 years old, including their own children.

From late December 2020 to mid-January 2021, DHHS restricted contact between the parents and their children, and they sought to change the children's placement. However, Father and Mother were again unable to find someone other than the paternal grandmother who could care for the children.

On 13 January 2021, DHHS petitioned the trial court to adjudicate the three children neglected and dependent. The trial court then held pre-adjudication and adjudication hearings, in which it heard NP Watt's testimony on the children's CMEs. Father and Mother objected to the CME reports coming into evidence on hearsay grounds. The trial court overruled these objections and admitted the reports through the combination of two exceptions to the hearsay rule: records of regularly conducted activity under N.C.G.S. § 8C-1, Rule 803(6) and statements for purposes of medical diagnosis or treatment under N.C.G.S. § 8C-1, Rule 803(4). The trial court ultimately adjudicated all the children neglected and dependent.

On appeal, Father challenges these adjudications and argues that the trial court prejudicially erred in considering the children's hearsay statements to the forensic interviewer. Father contends that the statements constituted inadmissible hearsay which did not fall within the exception for statements seeking medical

diagnosis or treatment under Rule 803(4).³

ANALYSIS

In reviewing a trial court’s adjudications of neglect and dependency, we examine (1) whether the trial court’s findings of fact are supported by clear and convincing evidence and (2) whether those findings of fact support the trial court’s conclusions of law. *In re T.H.T.*, 185 N.C. App. 337, 343 (2007), *aff’d as modified*, 362 N.C. 446 (2008). “Unchallenged findings of fact are deemed supported by the evidence and are binding on appeal.” *In re K.H.*, 281 N.C. App. 259, 266 (2022). We review *de novo* whether a trial court’s findings of fact support its conclusions of law. *Id.* However, even if some findings of fact are based on inadmissible evidence, we “simply disregard[] information contained in findings of fact that lack sufficient evidentiary support and examine[] whether the remaining findings support the trial court’s determination.” *In re A.J.L.H.*, 384 N.C. 45, 48 (2023) (marks omitted). Thus, when “ample other 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 (2006).

Father specifically challenges only findings of fact 51, 52, 53, 54, 59, 60, 63, and 66 in the adjudication order, which read as follows:

51. NP Watt’s expert medical opinion was a diagnosis of [Felix] with medical neglect, domestic violence exposure,

³ Father does not challenge the admissibility of the reports through Rule 803(6), the exception for records of regularly conducted activity.

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drug/weapon endangerment, and a high concern for physical abuse. [Felix] was diagnosed with medical neglect as [Felix] was over two (2) years behind on receiving a well child check, the skin issues the juvenile had which could have been discussed at a well child check. There was not only an issue with getting the juvenile seen, there was also an issue with the juvenile showing up for an appointment. NP Watt took into account all three (3) siblings' statements, which included statements that some were hit by [Mother] and [Father] which is contrary to the recommendations of the American Academy of Pediatrics in order for her diagnosis of a high concern for physical abuse. NP Watt explained that [Felix] was old enough to remember where the scars came from but did not remember where all of the scars came from.

52. NP Watt also had concern for the juveniles being coached, specifically as to [Felix], as he was speaking with [Grandmother] right before walking into his forensics interview and during [Felix]'s forensics interview, the juvenile was asked, "Since you have been here-Anyone tell you what not to say?" [Felix] stated, "A little bit." The juvenile was then asked, "Who?" [Felix] replied, "My grandma." He was asked, "What did she say?" [Felix] replied, "I forgot, I have bad memory for some reason. She said to say no and stuff. But I am answering the way I want, I'm answering the right way." The juvenile was asked, "What no to stuff?" [Felix] replied, "Some stuff." He was asked, "What did she mean?" [Felix] replied, "I don't know . . . She just told me for some reason, maybe because I am the oldest."

53. NP Watt also noted concerns as to exposure to drugs [at] the household as [Felix] disclosed that both of his parents[] smoke "W[.]" When asked about drugs, [Felix] reported "W." When asked who does "W," [Felix] reported "My dad." [Felix] was asked what does it look like? [Felix] replied, "Brown, Dad smokes it" He has never seen them smoke it. When asked how he knows they use it, [Felix] replied, "I've smelled it." He was asked, "Anyone else use 'W?'" [Felix] replied, "My Mom." He was asked,

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“Has she ever smoked around you?” [Felix] replied, “Once.”

54. During [Felix]’s forensic interview, [Felix] discussed the bruising on [Jerry]. During the juvenile’s forensic interview, [Felix] was asked “Has anything else ever happened to [Jerry] for him to have bruises?” [Felix] replied, “Falling down, getting mad because he can’t eat more food. We don’t really feed him a lot because he has a pot belly. He does eat a lot.” He was asked, “Who says if he eats?” [Felix] replied, “mom and dad. But he does get whooped the same as us.” When asked, “Who all hits [Jerry]?” [Felix] replied, “. . . mom and dad, . . . brother, sister pops him.”

...

59. During [Chantal]’s forensics interview, she was asked, “What happens when you get in trouble at home?” [Chantal] replied, “I don’t know, I don’t remember.” The interviewer listed examples such as “time out.” [Chantal] replied, “I’m not positive, I think we do time out.” When a child gives a statement like this, NP Watt tries to fill in the gaps in the forensic interview and tries to get additional information. When asked, “What happens when you get in trouble[?]”, [Chantal] reported, “We just go in time out.” When asked about drugs, [Chantal] replied, “Only one, only W but I don’t know about that.” When asked if her parents [] do any drugs, the juvenile replied, “No, they don’t do drugs.” [Chantal] also knows about “W” though she denied parental drug use.

60. NP Watt[’s] expert medical opinion was a diagnosis for [Chantal] of medical neglect, domestic violence exposure, drug/weapon endangerment, and a high concern for physical abuse. [Chantal] was diagnosed with medical neglect as she was over two (2) years behind on receiving a well child check, had expressed chest pain and foot pain which needed to be seen at a higher level of care, and the parents were already aware of the chest pain and foot pain. NP Watt later learned that the concerns for chest pain and foot pain were not followed up on. [Father] did not take

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[Chantal] for follow up care the Monday as he stated he would, and NP Watt confirmed this appointment did not take place. There was not only an issue with getting the juvenile seen, there was also an issue with the juvenile showing up for an appointment. For the diagnosis of a high concern for physical abuse, NP Watt took into account all three (3) siblings' statements, which included statements that some were hit by [Mother] and [Father] which is contrary to the recommendations of the American Academy of Pediatrics.

...

63. During [Hugo]'s forensic interview, the juvenile made concerning statements about guns in the home. The forensic interviewer told [Hugo], "There are a couple of people watching, to make sure I ask you all the right questions." [Hugo] replied, "I don't like [Jerry] because, because, because uhmm because." The interviewer asked, "What don't you like?["] ["Jerry"] ["Who is that?" [Hugo] replied, "My cousin." The interviewer asked, "Why don't you like him?" [Hugo] replied, "I've been hurting him, and he kept bruising, he jumped out of the crib and he has bruises, and that's why I don't like him because he climbed out of the crib and gets the donuts and I was going to eat them. I was going to eat them, but [Jerry] is a bad boy." [Hugo] reported that [Jerry] jumped out of the crib four (4) times. When asked, "Did you see him jump out of the crib or did someone tell you?" [Hugo] replied, "No but I heard someone say he jumped out of the crib." When asked, "Who said that?" [Hugo] replied, "Mommy and daddy." The interviewer asked, "What about [Jerry] when he gets in trouble?" [Hugo] replied, "He gets hit. He is a bad boy and climbs out of the crib and falls to get the donuts, but I'm supposed to be a good boy and get the donuts." NP Watt had concern for coaching because [Hugo] kept repeating the same statement.

...

66. NP Watt's expert medical opinion was a diagnosis for

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[Hugo] with medical neglect, domestic violence exposure, drug/weapon endangerment, and a high concern for physical abuse. [Hugo] was diagnosed with medical neglect as [he] was over two (2) years behind on receiving a well child check and was behind on his immunizations. NP Watt had concern for physical abuse after the juvenile's statement that [Mother] and [Father] hit him, and the juvenile was unable to articulate where the scars on his back came from.

Assuming, *arguendo*, that the children's statements to the forensic interviewer were inadmissible hearsay, we disregard the above challenged findings of fact and look to whether ample other findings of fact support the adjudications of neglect and dependency.

A. Adjudication of Neglect

The trial court adjudicated the children neglected, finding that

the juveniles did not receive proper care, supervision and discipline from the parents and lived in an environment injurious to [their] welfare due to the mother's untreated mental health, the [parents'] substance abuse, the [parents' lack of treatment for substance abuse, and the injurious environment created by the abuse to [Jerry] with these juveniles in the home and witnessing the abuse.

This finding was based on two definitions of neglect: that the parent “[d]oes not provide proper care, supervision, or discipline[,]” N.C.G.S. § 7B-101(15)(a) (2022), and that the parent “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C.G.S. § 7B-101(15)(e) (2022). Furthermore, our Supreme Court has stated that in order to adjudicate a child neglected, there must be “some physical, mental, or emotional impairment of the juvenile *or a substantial*

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risk of such impairment as a consequence of the failure to provide ‘proper care, supervision, or discipline.’” *In re J.A.M.*, 372 N.C. 1, 9 (2019) (quoting *In re Stumbo*, 357 N.C. 279, 283 (2003)).

The trial court found, in its unchallenged findings of fact, that Father and Mother had substance abuse disorders but did not get treatment for them, that Mother had untreated mental health disorders, that Mother left the children unsupervised in the home while she used marijuana and methamphetamines, that Mother’s “substance use was at a level that impaired her ability to provide appropriate care, supervision and discipline in the home even during periods she was present in the home[,]” and that Father and Mother failed to provide for the children’s medical needs. These unchallenged findings demonstrate that the children were not provided proper care, supervision, or discipline and that this failure impaired the children’s physical health and put them at risk for mental or emotional impairment. The unchallenged findings support the trial court’s adjudication of neglect under N.C.G.S. § 7B-101(15)(a). *See* N.C.G.S. § 7B-101(15)(a) (2022) (defining “[n]eglected juvenile” as one whose parent “[d]oes not provide proper care, supervision, or discipline”).

As for its adjudication of neglect under N.C.G.S. § 7B-101(15)(e), the trial court found that Jerry was mistreated and malnourished in the home and that the children were aware of and exposed to that maltreatment, which “pose[d] a substantial risk of mental emotional impairment or harm to the juveniles. . . .” The unchallenged

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findings support the trial court's conclusion that the children were at a substantial risk of mental or emotional impairment because Father and Mother failed to provide medical care for the children or adequate supervision due to the Mother's substance abuse, and because the children were exposed to Jerry's maltreatment. The unchallenged findings supported the trial court's adjudication of neglect under N.C.G.S. § 7B-101(15)(e). *See* N.C.G.S. § 7B-101(15)(e) (2022) (defining "[n]eglected juvenile" as one whose parent "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare").

B. Adjudication of Dependency

The trial court also adjudicated the children dependent, concluding that

the juveniles' parents are unable to provide for the proper care or supervision and lack an appropriate alternative child care arrangement. Each of the alternative child care arrangements presented by the parents were not acceptable for reasons stated by witnesses in testimony today. Specifically noting, [Grandmother] served as TSP for a period of time but was not meeting the needs of the juveniles as she did not follow the safety plan and, therefore, did not remain a proper care provider for the juveniles in light of those deficiencies.

This conclusion was based on the definition of dependency in N.C.G.S. § 7B-101(9)(ii). *See* N.C.G.S. § 7B-101(9)(ii) (2022) (defining "[d]ependent juvenile" as one whose parent "is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement").

As stated above, the trial court's unchallenged findings of fact support the

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conclusion that Father and Mother were unable to provide for the children's care or supervision. In other unchallenged findings, the trial court found that Grandmother "did not remain a proper care provider" because she "was not meeting the needs of the juveniles as she did not follow the safety plan" and that Father and Mother could not procure an acceptable alternative caregiver. The trial court's adjudication of dependency under N.C.G.S. § 7B-101(9)(ii) was supported by the findings of fact and therefore proper.

CONCLUSION

The unchallenged findings of fact support the trial court's adjudications of neglect and dependency. We need not address the issue of whether the children's hearsay statements to the forensic interviewer were improperly admitted. We affirm.

AFFIRMED.

Judges TYSON and STADING concur.

Report per Rule 30(e).