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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-98

Filed 7 November 2023

Wake County, Nos. 22 JA 47, 48

IN THE MATTER OF: A.R., A.W.

Appeal by Respondent-Father from order entered 12 October 2022 by Judge Ashleigh P. Dunston in Wake County District Court. Heard in the Court of Appeals 23 October 2023.

Wake County Attorney's Office, by Mary Boyce Wells, for Petitioner-Appellee Wake County Health & Human Services.

Mercedes O. Chut for Respondent-Appellant Father.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F. E. Smith, for guardian ad litem.

PER CURIAM.

Father appeals from the trial court's order adjudicating his minor children, Amanda and Anna, neglected.¹ Father argues the trial court erred in adjudicating

¹ We use a pseudonym for ease of reading and to protect the identity of the juveniles. See N.C. R. App. P. 42(b).

his children neglected as there was insufficient evidence to support a conclusion the children were neglected.² We hold there was sufficient evidence to support its conclusion and affirm the trial court's adjudication order.

I. Factual and Procedural Background

Amanda and Anna were born to Father and their Mother in 2015 and 2016, respectively. **{R 23}**. Wake County Health and Human Services first received reports concerning the family in June and November 2016. In January 2021, WCHHS received another report regarding domestic violence and an injurious environment, although the case was eventually closed.

On 31 January 2022, WCHHS received a report that law enforcement was called to Mother's home after she sent text messages to Father, threatening to harm or kill Father, the children, and herself. Further, the report noted, among other things, the home was in poor condition and the children appeared to be hungry and dirty.

On 18 March 2022, WCHHS filed individual juvenile petitions for both Amanda and Anna, which made identical allegations: the children were neglected because Father and Mother failed to provide proper care, supervision, or discipline of the children and created, or allowed to be created, a living environment injurious to

² While the trial court's "Order on Adjudication and Disposition and Notice of Hearing" contains both adjudicatory and dispositional findings, Father only challenges the trial court's adjudicatory findings.

the juveniles' welfare. The petitions further alleged Father and Mother had a history of substance abuse, domestic violence in the presence of the children, and that the children were in a temporary safe placement with their maternal grandparents.

Pre-adjudication hearings were held on 19 April and 17 May 2022. At the conclusion of these hearings, the children remained in the custody of their maternal grandparents, with Father being allowed visitation every other Sunday and phone calls. An adjudication hearing was held on 31 August 2022 in Wake County District Court. On 12 October 2022, the trial court entered an "Order on Adjudication and Disposition and Notice of Hearing" adjudicating Amanda and Anna neglected. On 10 November 2022, Father timely filed notice of appeal.

II. Standard of Review

We review an adjudication of neglect to determine whether the trial court's findings of fact are supported by clear and convincing evidence, and whether those findings support the trial court's conclusions of law. *See In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (internal marks and citations omitted). We review the trial court's conclusion of law *de novo*. *See In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022).

III. Analysis

Father argues the trial court erred in adjudicating his children neglected, as there was insufficient evidence to support a conclusion that the children were neglected. Specifically, Father contends the trial court erred in Findings of Fact 4, 5,

8, 10, 12-14, and 17-23, and in concluding the children were neglected.

A. Findings of Fact

Father challenges Findings of Fact 4, 5, 8, 10, 12-14, and 17-23, arguing these Findings were not supported by clear and convincing evidence.

1. Finding of Fact 4

Father contends the trial court erred in Finding of Fact 4 which states, in relevant part:

For several hours on January 29, 2022, the parents exchanged text messages. [Mother] was making nonsensical statements, and made statements that the police needed to be called or she was going to kill herself, the children, and [Father]. [Father] asked [Mother] multiple times if the children were alright, but he waited several hours before finally contacting law enforcement[.]

Father argues the trial court erred in the above Finding as the record contains no evidence regarding the messages he and Mother exchanged or how long he waited to contact law enforcement.

However, Father testified:

A. Well, I started to get some concerning messages from [Mother] about some kind of satanic warfare that she felt like she was going through and that she was like a high oracle and basically it led to her stating that she thinks she's going crazy, for me to call the cops because she's thinking about hurting herself and the kids.

[. . .]

Q. What time did those text messages come in?

A. It was in the evening. They started in the early afternoon like—nothing like too crazy but our contact started in the early afternoon but the stuff that started getting concerning probably started around like—I don't know, 6:30 or 7:00.

[. . .]

Q. When did you call the cops?

A. It was not too long after that. It was probably around 8:00.

Here, Father's own testimony supports Finding of Fact 4 as Father stated he and Mother were texting all day and she began sending nonsensical messages, yet he waited until 8:00 p.m. to call law enforcement. Accordingly, Finding of Fact 4 is supported by clear and convincing evidence.

2. Finding of Fact 5

Father contends the trial court erred in Finding of Fact 5 which states, in relevant part:

After calling law enforcement, [Father] then waited down the street from the mother's apartment, to allow law enforcement to arrive first. The maternal grandparents arrived later and assumed care of the children.

Father argues this portion of Finding of Fact 5 is not supported by clear and convincing evidence as the record was void of evidence which supports the first sentence and of any evidence suggesting Father "agreed to let the grandparents take custody of his daughters[.]"

Father specifically testified:

I called the police on my way to go to her house. But I stopped like maybe five minutes from her house because I wanted the police to be there when I got there. I didn't want to show up before the police[.]

Father's testimony here supports the trial court's Finding that Father waited to allow police to arrive at Mother's house before him. Further, Father's argument as to whether he allowed the grandparents to take custody of his children is misplaced, as Finding of Fact 5 only notes the grandparents assumed care of the children and in no way addresses whether or not Father agreed to allow the grandparents to take custody. As such, Finding of Fact 5 is supported by clear and convincing evidence.

3. Finding of Fact 8

Father challenges Finding of Fact 8, which states: "WCHHS requested that [Father] participate in anger management due to concerns with his behavior, and a history of reports including domestic violence concerns with [Father]. The agency required that [Father's] visitation with the children be supervised." Father argues this Finding was not supported by competent evidence and is erroneous, as WCHHS was unjustified in requesting he participate in anger management. Further, Father contends "the record contains no evidence [he] engaged in angry, concerning, or inappropriate behavior[.]"

Despite Father's contentions here, Finding of Fact 8 does not expound on whether WCHSS's concerns were justified. Whether justified or unjustified, the WCHHS social worker testified as to the concerns which led to their recommendation

that Father participate in anger management, stating:

There was just concerns about I know during the assessment process we were just—I guess, I’m trying to phrase it right—his behavior. He was calling us consistently and—and also there was a history of domestic violence between the parents. That was kind of concerning. We did see, you know, reports of domestic violence between the parents and there was a history of that.

Further, the social worker testified Father was required to have supervised contact with his children because “during the assessment process [Father] was threatening to—to disrupt placement with the maternal grandparents because he was stating that there were concerns that they were not answering his call[s] and he was not having contact with his kids as he, you know, as he wanted[.]” Because the social worker’s testimony supports this Finding, there was clear and convincing evidence to support the trial court’s Finding of Fact 8.

4. Finding of Fact 10

Father challenges Finding of Fact 10 which states: “[Father] called the grandparents excessively, even calling their local law enforcement agency to conduct a well-check when the grandfather would not provide a phone number where the children can be reached.”

Father contends the record is void of any evidence suggesting he called the grandparents excessively or acted inappropriately in calling law enforcement for a welfare check after the grandparents denied him telephone access to the children. The Finding here does not suggest Father acted inappropriately in calling law

enforcement. As such, that portion of Father’s argument is misplaced. Moreover, the maternal grandmother testified Father was “blowing up [her] phone” and would often call “at off hours like 6:00 or 7:00 a.m. in the morning when [she was] trying to get the girls ready for school.” Because this testimony provides clear and convincing evidence which supports the above Finding, the trial court did not err in Finding of Fact 10.

5. Finding of Fact 12

Respondent challenges Finding of Fact 12, which states: “[Father] was very frustrated with his involvement with WCHHS and feels that they were not responsive to his contact and concerns.” Father argues this Finding is erroneous to the extent it implies he was frustrated with WCHHS.

Nonetheless, Father himself testified he had to call the WCHHS social worker “basically every day for three weeks and to get a call . . . I ended up having to contact her supervisor for her to call me[.]” Further, when asked how it made him feel that his calls were not being returned, Father responded: “Very frustrat[ed].” Father’s testimony provides clear and convincing evidence which supports Finding of Fact 12. As such, the trial court did not err in Finding of Fact 12.

6. Finding of Fact 13

Respondent challenges Finding of Fact 13, which states:

On March 10, 2022, [Mother] sought and was granted a Domestic Violence Protective Order against [Father], which on April 5, 2022 was extended until March 10, 2023.

[Father] did not challenge entry of the Order, but did request that the children not be included.

Father generally argues the trial court erred in considering post-petition evidence and specifically argues the second sentence of the Finding is not supported by any evidence.

As to Father's contention regarding the court's consideration of post-petition evidence, Father is correct—post-petition evidence generally cannot be considered in an adjudicatory proceeding. *See In re L.N.H.*, 382 N.C. 536, 543, 879 S.E.2d 138, 144 (2022) (citation omitted). However, this rule is not absolute as this Court has previously determined that post-petition evidence detailing “fixed and ongoing circumstance[s]” may be considered in neglect adjudications, and that findings based on this evidence are binding. *In re G.W.*, 286 N.C. App. 587, 594, 882 S.E.2d 81, 88 (2022) (citations and quotation marks omitted).

Here, the petition alleged “a history of domestic violence between the parents in the presence of the children[,]” and that Mother obtained a protection order against Father in early March. This issue of domestic violence, alleged in the petition, was an ongoing circumstance. Thus, the trial court was permitted to consider this post-petition evidence and make a finding relevant to the adjudication of neglect, as it was “relevant to the existence or nonexistence of conditions alleged in the adjudication petition.” *See In re G.W.*, 286 N.C. at 594, 882 S.E.2d at 88.

Father also contends the court did not hear evidence which would support the

second sentence of the Finding. However, Father openly admitted at the hearing “[h]e did not challenge entry of the Order, but did request that the children not be included” and testified he “told the Judge that if [Mother] wants a DVPO then give it to her. I just want the kids taken off.”

This testimony provides clear and convincing evidence which supports Finding of Fact 13. Thus, the trial court did not err in Finding of Fact 13.

7. Finding of Fact 14

Respondent challenges Finding of Fact 14, which states:

[Father] has previously had Domestic Violence Protective Orders issued against him in previous relationships, and has been convicted of violating those orders. The most recent violation was on April 10, 2012.

Father argues the trial court “heard no evidence to support [F]inding 14.” However, Father testified he had previously been convicted of both simple assault and violating a domestic violence protective order issued against him. While this evidence supports a portion of the above Finding, Father is correct in noting evidence was not introduced in support of the portion of the Finding concerning the date of his most recent violation. This portion of the Finding is seemingly based on a guardian ad litem dispositional court report containing a record of Father’s convictions, as Father’s prior convictions were not otherwise included in the record. The guardian ad litem report cannot serve as the basis for adjudicatory findings per N.C. Gen. Stat. § 7B-808(a) which states: “[n]o predisposition report shall be submitted to or

considered by the court prior to the completion of the adjudicatory hearing.” N.C. Gen. Stat. § 7B-808(a) (2021).

Because evidence in dispositional reports cannot be considered for adjudicatory purposes, *see In re Mashburn*, 162 N.C. App. 386, 396, 591 S.E.2d 584, 591–92 (2004); N.C. Gen. Stat. § 7B-808, the final sentence in Finding of Fact 14 is not supported by clear and convincing evidence and is therefore erroneous. *See In re N.G.*, 186 N.C. App. at 4, 650 S.E.2d at 47.

8. Findings of Fact 17 through 23

Father generally challenges Findings of Fact 17 through 23 arguing: “[t]hese findings appear to be dispositional findings. To the extent any are adjudication findings, the court did not hear evidence to support during the adjudicatory hearing.”

We agree that Findings of Fact 18 through 23 are, in fact, dispositional findings as they address matters concerning the children’s best interest—supervised visitation, the social worker’s efforts in facilitating visitation, and Father’s efforts to meet WCHHS’s recommendations for reunification of Father with his children—and do not refer back to the conditions alleged in the petition.³

However, Finding of Fact 17 is relevant for adjudicatory purposes as WCHHS’s petitions alleged Father had “a criminal record significant for convictions related to

³ We recognize Finding of Fact 21 addresses a purported instance of domestic violence between Father and Mother—a condition alleged in the petition. However, this Finding was based on evidence presented during the dispositional phase of the hearing, after the children had been adjudicated neglected. Thus, the Finding is erroneous as it is based on post-adjudication, dispositional evidence.

. . . substance abuse[.]”

Finding of Fact 17 states: “[Father] has a history of substance abuse concerns, including two separate convictions of DWI.” At the hearing, Father testified he had: a history of abusing substances, two convictions for driving while impaired, and experimented with alcohol and marijuana. Father also testified he was convicted of driving while impaired in 2006 and 2017. This testimony provides clear and convincing evidence which supports the trial court’s Finding of Fact 17. Thus, while we disregard Findings of Fact 18 through 23 as dispositional findings, we hold the trial court did not err in Finding of Fact 17.

B. Conclusion of Neglect

Father generally challenges the trial court’s conclusion that his children were neglected arguing there was insufficient evidence to support such a conclusion as the evidence failed to show: the children suffered any harm; or a pattern of conduct causing, or potentially causing, injury to the children.

Our North Carolina General Statutes, section 7B-101(15), defines a neglected juvenile as a juvenile whose parent, among other things: fails to provide proper care or supervision; or creates or allows to be created an injurious living environment. N.C. Gen. Stat. § 7B-101(15)(a), (e) (2021). In adjudicating a child neglected, the court focuses on the circumstances and conditions surrounding the child, not on the culpability of a particular parent. *In re R.B.*, 280 N.C. App. 424, 432, 868 S.E.2d 119, 125 (2021) (internal marks and citations omitted). Further, the court need not wait

for actual harm to occur if the child is at substantial risk of harm in the home. *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 780 (2009) (citation and quotation marks omitted). A substantial risk of harm to a child may be posed by dangerous conduct, or a pattern of conduct, causing, or potentially causing, injury to the child, such as: “alcohol or substance abuse by the parent, . . . exposing the child to acts of domestic violence, [and] abuse of illegal substances[.]” *Id.* Moreover, a history of substance abuse and mental health issues can form the basis for a neglect adjudication. *Id.* at 755, 678 S.E.2d at 781.

Here, the trial court’s unchallenged Findings of Fact, together with the above Findings, supported by clear and convincing evidence support a conclusion of neglect. Not only were the children reportedly hungry and living in unsanitary conditions, but Mother had a history of mental health problems, including an acute crisis in which she threatened to kill Father, the children, and herself. Additionally, both parents had substance abuse issues, and there was ongoing concern regarding domestic violence and Father’s untreated anger management.

Because the record is replete with evidence which indicates Mother and Father both failed to provide proper care for the children and created an injurious living environment for the children, the trial court did not err in concluding the children were neglected pursuant to N.C. Gen. Stat. § 7B-101(15).

IV. Conclusion

For the aforementioned reasons, the trial court did not err in concluding the

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children were neglected juveniles.

AFFIRMED.

Panel consisting of Judges DILLON, ARROWOOD, and GRIFFIN.

Report per Rule 30(e).