

Case Brief: *In re J.A.M.*, 372 N.C. 1, 822 S.E.2d 693 (2019)*

INTRODUCTION TO THE CASE

In the case *In re J.A.M.*,¹ the North Carolina Supreme Court reviewed whether a trial court's finding that an infant was neglected was supported by clear and convincing evidence as required by state law.² The Supreme Court affirmed the Court of Appeals' determination that the "cumulative weight"³ of the factual findings of the trial court was sufficient to support an adjudication of neglect and held that the appellate court had properly applied the required standard of review.⁴ In particular, the Court held that previous adjudications of neglect of other children in the home plus present risk factors were enough to support an adjudication of neglect of J.A.M.⁵

THE STATE OF THE LAW

Section § 7B-101(15) of the North Carolina General Statutes defines a neglected juvenile as "[a]ny juvenile less than 18 years of age . . . (ii) 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*; . . . In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or *lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.*"⁶ For a court to adjudicate a child neglected, there must "be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide 'proper care, supervision, or discipline.'"⁷ In the case of newborns and infants, the trial court's decision must be "predictive in nature" because the trial court must evaluate "whether there is a substantial risk of

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1. 372 N.C. 1, 822 S.E.2d 693 (2019).

2. N.C. GEN. STAT. § 7B-805 (2019).

3. *In re J.A.M.*, 2018 N.C. App. LEXIS 581, 12, 816 S.E.2d 901, 905 (2018).

4. *J.A.M.*, 372 N.C. at 11, 822 S.E.2d at 700.

5. *Id.*

6. N.C. GEN. STAT. § 7B-101(15) (2019) (emphasis added).

7. *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003) (quoting *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993)).

future abuse or neglect of a child based on the historical facts of the case.”⁸ Evidence of abuse or neglect of another child in the home is relevant but not determinative.⁹ The statute gives the judge “some discretion” in balancing the weight of prior neglect.¹⁰

Under Section 7B-805, an allegation that a juvenile has been neglected must be proven “by clear and convincing evidence.”¹¹ In a case without a jury considering the neglect of a child, a “trial court’s findings of fact supported by clear and convincing competent evidence are deemed conclusive,” even if there is evidence that could support contrary findings.¹² In other words, as long as the trial court’s conclusions are supported by findings of fact based on clear and convincing evidence, those conclusions are binding in the event of an appeal.¹³ In the initial appeal, *In re J.A.M.*, the Court of Appeals initially misapplied this standard of review because it found that no evidence supported the trial court’s findings of fact.¹⁴

DESCRIPTION OF CASE AND NORTH CAROLINA SUPREME COURT’S HOLDING

This case came to the courts following the birth of J.A.M. in January 2016.¹⁵ In late February 2016, the Mecklenburg County Department of Social Services, Youth and Family Services (“YFS”) opened an investigation into J.A.M. after receiving reports of the child’s birth.¹⁶ On February 29, YFS filed a juvenile petition claiming that J.A.M. was not safe in the home based on the department’s history with both of the parents.¹⁷ At a district court hearing on March 30, the court adjudicated J.A.M. as neglected and ordered reunification efforts with J.A.M.’s mother to cease, while the primary care plan would be reunification with her father.¹⁸ J.A.M.’s mother appealed this order adjudicating J.A.M. a neglected juvenile.¹⁹

Over the course of YFS’s relationship with J.A.M.’s mother, J.A.M.’s mother’s parental rights had been terminated for all her six older children as a result of a history of domestic violence with her partners and the children being caught in the middle of these domestic violence incidents. During the

8. *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

9. *In re A.K.*, 360 N.C. 449, 456, 628 S.E.2d 753, 757 (2006).

10. *Matter of Nicholson*, 114 N.C. App. 91, 94, 440 S.E.2d 852, 854 (1994).

11. N.C. GEN. STAT. § 7B-805 (2019).

12. *Matter of Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997).

13. *In re Johnston*, 151 N.C. App. 728, 731, 567 S.E.2d 219, 221 (2002).

14. *In re J.A.M.*, 251 N.C. App. 114, 120, 795 S.E.2d 262, 266 (2016).

15. *In re J.A.M.*, 372 N.C. 1, 2, 822 S.E.2d 693, 694 (2019).

16. *Id.*

17. *Id.*

18. *Id.* at 2, 822 S.E.2d at 694–95.

19. *Id.* at 6, 822 S.E.2d at 697.

adjudication hearing in March 2016 regarding J.A.M., evidence presented included the adjudications and termination orders regarding five of the mother's other children and a copy of the criminal record of J.A.M.'s father showing he had been convicted twice for assault on a female in 2013.²⁰ Testimony by a social work supervisor at the hearing revealed that both parents had declined to sign a safety assessment performed by YFS after J.A.M.'s birth and that the mother refused to set up a Child Family Team meeting or engage in any other services through YFS.²¹ Based on the evidence presented, including the mother's testimony during the hearing, the trial court determined that J.A.M. was neglected because it found the child "resides in an environment in which both parents have a history of domestic violence/assault and each parent had a child enter YFS custody that was deemed abused while in the care of each parent. All of juveniles' siblings were adjudicated neglected. *No evidence the parents have remedied the injurious environment they created for their other children.*"²²

The trial court supported its conclusions with the following findings of fact: "[YFS] attempted to engage parents when it received a referral and both parents declined to work [with YFS] and reported not needing any services. . . . Previously [the mother]'s children were returned to her care and ended up back in [YFS'] custody due to the abuse of one of the juveniles and it appeared [the mother] was not demonstrating skills learned from service providers. . . . [The mother] has a [history] of dating violent men and [the father] in this case has been found guilty at least twice for assault on a female. [The mother] acknowledged being aware [the father] had been charged [with] assaulting his sister but [she] said she never asked [him] if he assaulted his sister despite testifying about the "red flags" she learned in [domestic violence services]. . . . [YFS] received a total of 12 referrals regarding the [mother] and at least 11 referrals pertained to domestic violence. . . . To date [the mother] failed to acknowledge her role in [her older children] entering custody and her rights subsequently being terminated."²³

The mother appealed the adjudication of neglect for J.A.M. and in December 2016, the Court of Appeals reversed the neglect adjudication because it found that there was no evidence to support the trial court's findings of fact.²⁴

YFS filed a petition for discretionary review with the North Carolina Supreme Court, which in March 2018 found that the Court of Appeals had misapplied the standard of review.²⁵ The Court reversed the Court of Appeals decision and remanded the case for proper application of the standard of review

20. *Id.* at 3–4, 822 S.E.2d at 695.

21. *Id.* at 4, 822 S.E.2d at 695–96.

22. *Id.* at 5, 822 S.E.2d at 696 (emphasis added).

23. *Id.* at 6, 822 S.E.2d at 696–97.

24. *Id.* at 6–7, 822 S.E.2d at 697.

25. *Id.* at 7, 822 S.E.2d at 697.

because “the trial court’s finding was ‘supported by clear and convincing competent evidence’ and therefore ‘deemed conclusive.’”²⁶ On remand, a divided Court of Appeals affirmed the neglect adjudication.²⁷ It held that the trial court’s findings constituted evidence that was “predictive of future neglect” because it found that the mother “(1) continued to fail to acknowledge her role in her rights being terminated to her six other children, (2) denied the need for any services for J.A.M.’s case, and (3) became involved with the father, who engaged in domestic violence, resulting in at least two convictions, even though domestic violence was one of the reasons her children were removed from her home”²⁸

Based on a dissenting opinion in the Court of Appeals, the mother appealed again asking whether the trial court’s findings of fact and the competent evidence supported the conclusion that J.A.M. was neglected.²⁹ Ultimately, the North Carolina Supreme Court found that “the trial court’s adjudication that J.A.M. was a neglected juvenile was based on findings of fact which were supported by competent evidence and included present risk factors in addition to an evaluation of past adjudications involving other children.”³⁰ The Supreme Court affirmed the decision of the Court of Appeals because it had properly applied the standard of review.³¹

POTENTIAL IMPLICATIONS

The Supreme Court’s holding weighed the safety of an infant whose parents have previously been found to have abused or neglected a different child over the parents’ interest in raising their own child.

While the Court of Appeals’ majority decision in June 2018 was affirmed, one appellate judge did write a dissent.³² The dissent claims that the majority’s decision was based primarily on the evidence of a previous adjudication of neglect and failed to take into account the lack of evidence of neglect to the child at issue or the evidence that the parents were able to meet the needs of the child.³³ In essence, the dissenting judge disagrees that there were present risk factors that, when combined with the previous history of the parents, should result in an adjudication of neglect.³⁴

26. *Id.* (quoting *In re J.A.M.*, 370 N.C. 464, 466, 809 S.E.2d 579, 581 (2018)).

27. *Id.*

28. *In re J.A.M.*, 2018 N.C. App. LEXIS 581, 11–12, 816 S.E.2d 901, 905 (2018).

29. *J.A.M.*, 372 N.C. at 8, 822 S.E.2d at 698.

30. *In re J.A.M.*, 372 N.C. at 11, 822 S.E.2d at 700.

31. *Id.*

32. *In re J.A.M.*, N.C. App. LEXIS at 13, 816 S.E.2d at 906 (Tyson, J., dissenting).

33. *See id.* at 16–17, 816 S.E.2d at 907.

34. *Id.* at 18, 816 S.E.2d at 907.

The dissenting judge points to two cases that he believes better characterize the kinds of present risk factors that could result in an adjudication of neglect when there was a history of neglect with prior children. In the first case, *In re E.N.S.*,³⁵ a young mother gave birth to a child while living in a residential drug treatment facility; the child was immediately taken by the Department of Social Services.³⁶ The mother previously had a child taken from her custody after it was deemed neglected.³⁷ In finding that the second child was appropriately adjudicated neglected, the trial court pointed to evidence that the mother violated established curfews, continued to struggle with substance abuse, and failed to “demonstrate a willingness to provide any parenting skills to her oldest child that would have assisted her with the supervision and control of [her youngest child].”³⁸ The dissent distinguished the current case from *In re E.N.S.* by stating there was no evidence that the mother was engaging in activities that could put J.A.M. at risk for neglect; rather, the child was receiving proper care from both of her parents.³⁹

The dissent also points to *In re C.G.R.*,⁴⁰ in which an infant was held to be neglected because there was “a substantial risk of . . . continued neglect as a result of [the mother’s] failure to provide and maintain stable housing and maintain employment”⁴¹ The mother had also previously been found to have neglected her older child after a drug raid at her home.⁴² The dissent claimed that J.A.M.’s case differed because there were no findings of fact that J.A.M. was currently at a substantial risk of being neglected.⁴³

Although courts may consider continued substance abuse issues as a more obvious reason to find a child to be neglected than the potential for domestic violence, there is certainly an argument that living with a man who has previously been charged with domestic violence creates just as much of a potential threat for an infant in the home. J.A.M.’s case can also be analogized to that of C.G.R. because the mother in C.G.R. likewise was found to have “continued to make poor choices” in deciding with whom to associate and failed to demonstrate an understanding of how her decisions had impacted her children.⁴⁴ Refusal to take accountability for the previous termination of custody of one’s children could easily be seen as a failure to learn how to protect

35. 164 N.C. App. 146, 595 S.E.2d 167 (2004).

36. *Id.* at 147–48, 595 S.E.2d at 168.

37. *Id.* at 148, 595 S.E.2d at 168.

38. *Id.* at 151–52, 595 S.E.2d at 170–71.

39. *J.A.M.*, N.C. App. LEXIS at 15–16, 816 S.E.2d at 906.

40. 216 N.C. App. 351, 717 S.E.2d 50 (2011).

41. *Id.* at 361, 717 S.E.2d at 56–57.

42. *Id.* at 361, 717 S.E.2d at 56.

43. *J.A.M.*, N.C. App. LEXIS at 16, 816 S.E.2d at 907 (Tyson, J., dissenting).

44. *C.G.R.*, 216 N.C. App. at 358, 717 S.E.2d at 54–55.

and raise children in a safe environment and could certainly lead to future neglect.

By affirming the trial court's adjudication of neglect for the infant J.A.M., the North Carolina Supreme Court balanced the safety of the infant over the interests of the mother to raise her own child. In this case, YFS only got involved with J.A.M. because it was notified of the child's birth, not because there had been reports of an incident with the child or because of a domestic violence incident between the parents.⁴⁵ While the mother's refusal to accept YFS services and failure to recognize her role in the previous removal of her other children are concerning,⁴⁶ it appears that the majority of the evidence leading to J.A.M.'s adjudication as a neglected juvenile derives from her parents' history with YFS.

In the future, this case may make it easier for social services to remove children, particularly infants, from the custody of their parents when other children have previously been removed due to abuse or neglect. The Supreme Court appears to set the bar low for finding "present risk factors"⁴⁷ or "current circumstances that present a risk to the juvenile."⁴⁸ Rather than expressing optimism in the parents' ability to now care for a child within a new relationship and after previously partaking in YFS services, the Court upheld the trial court's finding that there was "no evidence the parents had remedied the injurious environment they created for their other children."⁴⁹ This holding seems to deprive the parents of their constitutionally protected right to parent their own child, particularly for lower class or disadvantaged families who may be more likely to interact with social services.⁵⁰

On the other hand, infants require hands-on, around-the-clock care, which makes them more vulnerable to abuse or neglect.⁵¹ Therefore, the predictive nature of trial courts' decisions for newborns who have not yet been abused or neglected⁵² is desirable as compared to the option of waiting for a parent to injure an infant before removing the infant from the home. Infants especially have no way to protect or advocate for themselves, so perhaps courts are right to weigh previous behavior and evidence more heavily than the limited evidence that may be available shortly after a newborn's birth. Furthermore, the theme

45. *In re J.A.M.*, 372 N.C. 1, 2, 822 S.E.2d 693, 694 (2019).

46. *Id.* at 4–5, 822 S.E.2d at 696.

47. *Id.* at 11, 822 S.E.2d at 700.

48. *Id.* at 9, 822 S.E.2d at 698.

49. *Id.* at 5, 822 S.E.2d at 696.

50. *See In re A.K.*, 360 N.C. 449, 457–58, 628 S.E.2d 753, 758 (2006) ("The right to parent one's children is a fundamental right . . ."); *see also In re R.T.W.*, 359 N.C. 539, 542, 614 S.E.2d 489, 491 (2005) ("Parents have a fundamental right to the custody, care, and control of their children.").

51. For instance, shaken-baby syndrome is most likely to cause death in children under the age of six months. *Matter of Nicholson*, 114 N.C. App. 91, 93, 440 S.E.2d 852, 853 (1994).

52. *See supra* note 8 and accompanying text.

in the North Carolina Juvenile Code “is that the court’s primary concern must be the child’s best interest.”⁵³ This framework supports the decision of the N.C. Supreme Court to affirm the trial court in this case considering there were reasons to be concerned about J.A.M.’s living situation.⁵⁴

The N.C. Supreme Court’s decision in this case focuses on the interests of protecting an infant from potential abuse or neglect from parents who have had other children adjudicated neglected. While parents’ constitutional rights regarding their children should not be discarded and individuals should have the opportunity to make healthy decisions regarding their children despite poor decisions made in the past, the frailty of infants suggests that the best interests of the child may be to spend time away from those parents until the court is satisfied that past mistakes will not be repeated. The bar for that proof may be high, but when it comes to the lives of children, courts are ill-advised to make rushed decisions.

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53. *In re Pittman*, 149 N.C. App. 756, 761, 561 S.E.2d 560, 564 (2002), *cert. denied*, Harris-Pittman v. Nash Cty. Dep’t of Soc. Servs., 538 U.S. 982 (2003).

54. *See supra* notes 36–37, 39–40 and accompanying text.

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