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THE SUPREME COURT OF NEW HAMPSHIRE

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9th Circuit Court-Goffstown Family Division  
Case No. 2025-0068  
Citation: In re G.W., 2025 N.H. 53

IN RE G.W.

Argued: September 30, 2025  
Opinion Issued: December 10, 2025

Law Office of Fricano and Weber PLLC, of Nashua (Joseph Fricano on the brief and orally), for the mother.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Mary A. Triick, senior assistant attorney general, on the brief and orally), for the New Hampshire Division for Children, Youth and Families.

COUNTWAY, J.

[¶1] The respondent, the mother of G.W., appeals an order of the Circuit Court (Gorman, J.) finding that she abused and neglected her child.<sup>1</sup> See RSA 169-C:3, II(d) (2022) (abuse); RSA 169-C:3, XIX(b) (2022) (neglect). The mother argues that: (1) the evidence does not support the trial court's findings that she abused and neglected the child; and (2) the petitioner, the New Hampshire Division for Children, Youth and Families (DCYF), violated RSA 169-C:34, VI

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<sup>1</sup> Although the father was also a respondent in the proceedings before the circuit court, he is not a participating party in this appeal.

(2022), for which exclusion of the tainted statements is the appropriate remedy. We agree that the evidence does not support the trial court's finding that the mother abused the child and therefore reverse that finding. Although we agree that DCYF violated RSA 169-C:34, VI, we determine that any error was harmless and that there was sufficient evidence to support the trial court's finding of neglect. We accordingly affirm the trial court's finding of neglect.

[¶2] The following facts were found by the trial court or are otherwise supported by the record. Following the birth of G.W., he lived with the mother at her parents' home. The father often stayed with them. In April 2024, DCYF investigated an incident where the child rolled off a couch, but closed the case as unfounded.

[¶3] On May 8, the child had a routine appointment with his pediatrician. At this time, G.W. was approximately five weeks old. The parents told the pediatrician that there had been several instances of bleeding in the child's mouth. The pediatrician noted no sign of bleeding and made no determination as to its cause. That evening, the mother and the father got into an argument, during which the mother witnessed the father throw the child onto the bed in anger. The mother left the child in the care of the father overnight.

[¶4] The following morning, the mother noticed the child's left arm was not moving. After about four and one-half hours with no improvement to the child's arm, the mother called the pediatrician's office at 1:30 p.m. The nurse at the office, suspecting a potential neurological problem, recommended that the mother bring the child to the emergency room. The mother agreed, but did not immediately do so.

[¶5] When the child had not arrived at the emergency room by 5:00 p.m., the hospital social worker called the mother. The mother said that she was not taking the child to the emergency room because she wanted him to be seen by his pediatrician the following day, and she expressed concern about DCYF becoming involved if she took the child to the hospital. The hospital social worker told the mother that if she did not bring the child to the emergency room, the social worker would call DCYF. The mother did not indicate that she was coming to the hospital, so the hospital social worker notified the police and DCYF.

[¶6] The parents arrived at the emergency room with the child around 6:00 p.m. During the initial exam, the child cried when his left arm was touched, and it was noted that his "left humeral area was disformed." An x-ray showed that the child's left humerus was broken. The parents did not provide a plausible explanation for the injury. The on-call child protective services worker (CPSW) met with the parents at the hospital and created a safety plan,

which included admitting the child to the hospital and having the parents go home until the CPSW assigned to their case could meet with them the following day.

[¶7] The next day, the assigned CPSW and a police officer conducted an unannounced visit at the mother's residence. The parents continued to report that they did not know what happened to the child's arm. The police officer requested that the parents go to the police station to be interviewed and provide a statement. During the interviews, both parents reported that the father can sometimes be aggressive with the child.

[¶8] The child remained at the hospital and multiple medical providers saw him throughout the day. The child was referred to an expert in pediatric emergency care and pediatric abuse medicine (the pediatric expert). In addition to the acute broken humerus injury, the child had healed oral injuries of the sublingual and inferior frenula. The pediatric expert described the sublingual frenulum as the small band of tissue that connects the tongue to the floor of the mouth, and the inferior frenulum as the small band of tissue that connects the lower lip to the lower gum. The child also had a small subconjunctival hemorrhage, or a small area of bleeding, in the right eye. The multiple doctors involved in the child's case did not find that the child had a medical condition that would have made the humerus fracture likely. The pediatric expert also determined that the child's oral and eye injuries were indicative of trauma. The pediatric expert reported that the injuries were "highly concerning for physical abuse."

[¶9] DCYF filed petitions against each parent alleging abuse pursuant to RSA 169-C:3, II(d) and neglect pursuant to RSA 169-C:3, XIX(b). The court held an adjudicatory hearing. During the hearing, the parents moved to suppress statements made to the CPSWs, arguing that the CPSWs violated RSA 169-C:34, VI by failing to inform the parents of the specific nature of the charges. The trial court denied the motions. The trial court heard testimony from the two CPSWs, the hospital social worker, the responding police officer, both parents, the pediatric expert, and the mother's expert doctor. Based upon the testimony and evidence presented, the trial court found that "it is more likely than not that [G.W.] is an abused child and a neglected child." This appeal by the mother followed.

[¶10] When reviewing findings of abuse and neglect, we will sustain the findings and rulings of the trial court unless they are unsupported by the evidence or tainted by error of law. *In re J.H.*, 176 N.H. 238, 241-42 (2023). We defer to the trial court's assessment of the evidence and view the facts in the light most favorable to the court's decision. *Id.* at 242.

## I. Sufficiency of the Evidence

[¶11] We first address the mother’s argument that there was insufficient evidence to support the trial court’s findings that she abused and neglected G.W. DCYF had the burden to prove its abuse and neglect allegations by a preponderance of the evidence, see RSA 169-C:13 (2022), and the trial court found that DCYF met that burden. We address each finding in turn.

### A. Abuse

[¶12] DCYF alleged, and the trial court found, that G.W. is an abused child pursuant to RSA 169-C:3, II(d). That provision defines an “[a]bused child” as a child who has been “[p]hysically injured by other than accidental means.” RSA 169-C:3, II(d). We have interpreted this provision as “requiring proof that the alleged abusive act was committed under circumstances indicating harm or threatened harm to the child’s life, health, or welfare.” In re N.T., 175 N.H. 300, 312 (2022) (quotation omitted). Such harm “may be demonstrated by, for example, the severity of the intentionally inflicted injuries; recurring or a threat of recurring injury; or injury when a profile of the child’s caretaker indicates a history of, or a propensity for, abuse.” In re Samantha L., 145 N.H. 408, 413 (2000) (quotation omitted).

[¶13] We agree with DCYF that there was sufficient evidence for the trial court to find that the child was “physically injured by other than accidental means” based upon the testimony from the pediatric expert. We conclude, however, that there was not sufficient proof that the mother committed an abusive act “under circumstances indicating harm or threatened harm to the child’s life, health, or welfare.” N.T., 175 N.H. at 312 (quotation omitted).

[¶14] DCYF argues that the totality of the evidence shows that the mother was responsible for the non-accidental physical injury suffered by the child. In making this argument, DCYF emphasizes several facts: (1) on the evening of May 8, the mother watched the father drop the child onto the bed and did not meaningfully respond or attempt to limit the father’s access to the child; (2) the following morning, the mother observed the child to have an injury to his arm but allowed it to go untreated; and (3) the mother medicated the child’s pain and continued to manipulate and move the arm. This evidence, however, supports a finding of neglect, rather than a finding of abuse. See In re Craig T., 144 N.H. 584, 587 (1999) (concluding there was sufficient evidence of the mother’s neglect where the mother witnessed the father repeatedly hit the child and failed to intervene to protect the child). We agree with the mother that there was insufficient evidence to support a finding that she committed an abusive act. We accordingly reverse the trial court’s finding of abuse as to the mother.

## B. Neglect

[¶15] In assessing whether there was sufficient evidence of neglect, we do not rely upon the challenged statements that the mother argues the trial court should have excluded, as we discuss in Section II of this opinion. DCYF alleged, and the trial court found, that G.W. is a neglected child pursuant to RSA 169-C:3, XIX(b). That provision defines “[n]eglected child” as a child:

Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health, when it is established that the child’s health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian.

RSA 169-C:3, XIX(b); see also RSA 169-C:3, XXVII-a (2022) (defining “[s]erious impairment” as “a substantial weakening or diminishment of a child’s emotional, physical, or mental health or of a child’s safety and general well-being”). Statutory neglect “is not the actions taken or not taken by the parent or parents, but rather it is the likelihood of or actual serious impairment of the child’s physical, emotional, and mental well-being that are the conditions of neglect that must be repaired and corrected in the circuit court process.” In re J.R., 175 N.H. 676, 682 (2023) (quotation and brackets omitted).

[¶16] Based upon our review of the record, we conclude that the trial court’s finding of neglect is supported by sufficient evidence. First, the record reflects that the child’s health suffered “serious impairment.” RSA 169-C:3, XIX(b). The child, who was approximately five weeks old, had a displaced humerus fracture, torn frenula, and a subconjunctival hemorrhage. The pediatric expert testified that the fracture “would have been an acutely painful injury,” and if the arm were moved around, “it would be very clear that [it] was excruciatingly painful for the child.”

[¶17] The record also supports that the child was “without proper parental care or control.” Id. The pediatric expert testified that the humerus fracture could not have occurred from “routine infant-led activity” and would have required a force inconsistent with “routine handling by a reasonable caregiver.” For the oral injuries, the pediatric expert testified that some kind of “trauma” caused the frenula to tear, which is often seen in the context of forced feeding. She stated that to tear a frenulum using a bottle would “exceed routine handling by a reasonable caregiver,” and that the bleeding caused by the tear would be “abundantly clear” to a parent.

[¶18] Additionally, the evidence supports that the mother did not exercise the “proper parental care or control” necessary for the child’s physical health when she delayed seeking medical attention for the child’s broken arm. Id.

The mother argues that in making this assessment, we should “square her conduct against the appropriate conduct of a reasonable parent, guardian, or custodian who finds a child in like condition.” We assume, for the purposes of this analysis only, that the mother’s asserted “reasonable parent” standard is the proper inquiry in this case.

[¶19] The mother’s delay in bringing the child to the emergency room was not reasonable. The record supports the trial court’s findings that, despite being advised by a nurse at the pediatrician’s office that she should take the child to the emergency room, the mother did not do so until approximately three hours later when a hospital social worker told her that she must do so or DCYF would get involved. Upon arrival at the hospital, the child was found to have an “obvious injury to the left arm.” Accordingly, when we apply the mother’s purported standard and compare her “conduct against the appropriate conduct of a reasonable parent . . . who finds a child in like condition,” the record reflects that the mother did not act reasonably.

[¶20] We determine that the record supports that the child’s health suffered serious impairment and that the child was without proper parental care or control. See id. We accordingly conclude that there was sufficient evidence to support the trial court’s finding that the mother neglected the child.

## II. Violation of RSA 169-C:34, VI

[¶21] We next address the mother’s argument that DCYF social workers violated RSA 169-C:34, VI and that the exclusion of any tainted statements is the appropriate remedy. Addressing this argument requires that we engage in statutory interpretation. Statutory interpretation presents a question of law, which we review de novo. J.H., 176 N.H. at 242. When construing a statute, we first examine the language of the statute, and, if possible, construe that language according to its plain and ordinary meaning. Id. We interpret the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Id.

[¶22] RSA 169-C:34, VI provides, in part:

At the first contact in person, any person investigating a report of abuse or neglect on behalf of the department shall verbally inform the parents of a child suspected of being a victim of abuse or neglect of the specific nature of the charges and that they are under no obligation to allow a social worker or state employee on their premises or surrender their children to interviews unless that social worker or state employee is in possession of a court order to that effect. Upon receiving such information, the parent

shall sign a written acknowledgment indicating that the information required under this paragraph was provided by the person conducting the investigation.

In its order denying the parents' motions to suppress, the trial court determined that DCYF did not violate RSA 169-C:34, VI, and that even if a violation had occurred, suppression was not an appropriate remedy. The mother argues that the trial court erred when it concluded that no violation of RSA 169-C:34, VI occurred because both the on-call CPSW with whom she spoke at the hospital and the assigned CPSW with whom she spoke at her home failed to verbally inform her of "the specific nature of the charges." The mother asserts that her statements made to both CPSWs and any derivative evidence should accordingly be suppressed.

[¶23] The statute provides that any person investigating on behalf of DCYF "shall verbally inform the parents . . . of the specific nature of the charges." RSA 169-C:34, VI (emphasis added). "[W]e regard the use of 'shall' as a command which requires mandatory enforcement." N.T., 175 N.H. at 305 (quotation omitted). We thus agree with the mother that the statute prescribes mandates that any person investigating on behalf of DCYF must follow.

[¶24] We also agree with the mother that the DCYF social workers violated this mandate by failing to inform her of the "specific nature of the charges." RSA 169-C:34, VI. As the trial court found and the record reflects, both CPSWs introduced themselves and explained that they were meeting with the parents because DCYF received "a report of concern." The trial court made no finding that the CPSWs informed the parents that they were suspected of abuse and neglect, and the record reflects that no such notification was provided.

[¶25] DCYF argues that the CPSWs' statements that they were investigating a "report of concern" were accurate because there were no "charges" against the parents at the time of those conversations. Proceedings under RSA chapter 169-C, also called the Child Protection Act, are civil in nature, and do not put parents in the posture of criminal defendants. Samantha L., 145 N.H. at 411. Thus, Child Protection Act proceedings do not involve a "charge" in the same way a criminal proceeding does. Rather, a proceeding under the Act is originated by the filing of a petition that alleges neglect or abuse of a child. See RSA 169-C:7 (2022). Further, the statute applies "[a]t the first contact in person," and requires "any person investigating a report of abuse or neglect" to provide information to "parents of a child suspected of being a victim of abuse or neglect." RSA 169-C:34, VI (emphases added). The plain meaning of this language reflects that this mandate is intended to apply during the investigatory stage, before a petition or "charges" have been filed against the parents. We accordingly determine that the meaning of the word "charge" as used in RSA 169-C:34, VI is not a "formal

accusation of an offense as a preliminary step to prosecution,” Black’s Law Dictionary 291 (12th ed. 2024), but rather is synonymous with “accusation,” Oxford English Dictionary, [https://www.oed.com/dictionary/charge\\_n1?tab=meaning\\_and\\_use&tl=true#9596325](https://www.oed.com/dictionary/charge_n1?tab=meaning_and_use&tl=true#9596325) (last visited Dec. 8, 2025) (defining charge as “[a]n act of accusing someone of wrongdoing; an accusation”).

[¶26] The statute further requires that DCYF inform the parents “of the specific nature of the charges.” RSA 169-C:34, VI (emphasis added). The CPSWs did not explain that they were investigating a report of abuse or neglect, nor did they explain what the report of concern was about. The CPSWs’ use of the phrase “report of concern,” on its own, was not adequately specific. We accordingly determine that the trial court erred in concluding that DCYF did not violate the statutory mandate of RSA 169-C:34, VI. Of course, if the legislature disagrees with our interpretation, it is free to amend the statute as it sees fit, within constitutional bounds. See In re D.O., 173 N.H. 48, 58 (2020).

[¶27] Our review of the plain language of RSA 169-C:34, VI establishes that it provides no remedy, a proposition that no party disputes. The mother argues that the proper remedy is the exclusion of her statements to the CPSWs and any derivative evidence. We need not define the contours of the proper remedy here because it would not impact the result of this case. Even if we were to assume that exclusion is the proper remedy and that the trial court erred by failing to suppress the “tainted statements” and any derivative evidence, we agree with DCYF that any such error was harmless. See In re Tracy M., 137 N.H. 119, 125 (1993) (concluding that we need not determine whether the trial court erred in denying the petitioner’s request for a finding of fact because any error that may have occurred was harmless). “Where it appears that an error did not affect the outcome below, or where the court can see from the entire record that no injury has been done, the judgment will not be disturbed.” Id. at 125-26 (quotation omitted).

[¶28] The mother argues broadly that she challenges potentially “all” of her statements to the CPSWs and the derivative evidence as tainted. Even without the mother’s challenged statements and their derivative evidence, the other evidence presented at the hearing amply supports the trial court’s finding of neglect, as detailed in our analysis above. See In re Antonio W., 147 N.H. 408, 413-14 (2002) (concluding that even without the contested parent aide reports, “the abundance of other evidence presented at the hearing clearly supports the court’s decision,” and that any alleged error in their admission was therefore harmless).

[¶29] In fact, the mother concedes that “the evidence about [G.W.’s] injuries was overwhelming.” She argues, however, that the trial court “made negative credibility assessments” against her, which impacted its overall findings. It is true that the trial court did not find certain aspects of the

parents' testimony to be credible as compared to the expert medical testimony. These credibility determinations, however, did not impact the trial court's subsidiary findings essential to its ultimate finding of neglect. The outcome of this case was not based upon a contest of credibility. Cf. State v. Reynolds, 136 N.H. 325, 327, 329 (1992) (concluding that the admission of police officer's opinion testimony was not harmless because the case "was ultimately and essentially a credibility contest between the victim and the defendant"). We conclude, based upon the abundant evidence supporting the trial court's finding of neglect, that any negative credibility determinations arising from the admission of purportedly tainted statements and any derivative evidence did not affect the trial court's conclusion.

### III. Conclusion

[¶30] In conclusion, we determine that there was insufficient evidence to support the trial court's finding of abuse but that there was sufficient evidence to support the trial court's finding of neglect. We further conclude that any error in not excluding the mother's statements to the CPSWs and the derivative evidence was harmless. Any issues the mother raised in her notice of appeal but did not brief are deemed waived. See State v. Blackmer, 149 N.H. 47, 49 (2003).

Affirmed in part and reversed in part.

MACDONALD, C.J., and DONOVAN, J., concurred