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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-857

Filed: 21 March 2017

Rockingham County, Nos. 14 JA 96-98

IN THE MATTER OF: G.W., E.W., and J.W.

Appeal by respondent-parents from order entered 9 June 2016 by Judge James A. Grogan in District Court, Rockingham County. Heard in the Court of Appeals 27 February 2017.

Beverley A. Smith, for petitioner-appellee Rockingham County Department of Social Services.

Julie C. Boyer, for respondent-appellant-mother.

Edward Eldred, for respondent-appellant-father.

Stephen M. Schoeberle, for guardian ad litem.

STROUD, Judge.

Respondent-parents appeal from an order terminating their parental rights to their minor children. For the following reasons, we affirm.

I. Background

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On 10 June 2014, the Rockingham County Department of Social Services (“DSS”) filed a petition alleging George, Ethan, and John¹ were neglected and dependent juveniles due to respondent-mother’s problems with substance abuse and both respondents’ criminal activity. DSS obtained non-secure custody of the children, but continued placement of the children with a relative, Ms. Scott, with whom the children had been residing since May of 2014.

The trial court entered an order adjudicating the children to be neglected and dependent juveniles. In a separate disposition order, the court directed DSS to continue to work toward reunifying the children with respondent-parents although eventually the court changed the plan to adoption. On 22 February 2016, DSS filed a petition to terminate respondent-parents’ parental rights to the children. On 9 June 2016, the trial court terminated respondents’ parental rights on the grounds of neglect and failure to make reasonable progress regarding the conditions that led to the removal of the children, and as to respondent-father, on the additional ground of dependency. Respondents appeal.

II. Respondent-Father’s Appeal

Respondent-father’s only arguments on appeal are regarding the denial of his motion to continue. Respondent-father first contends that the denial of his motion violated his constitutional right to due process. But respondent-father did not

¹ Pseudonyms are used throughout for ease of reading and to protect the children’s identities.

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present a constitutional argument to the trial court when he made his motion to continue; his counsel merely argued that a continuance was needed “just so everything is extremely fair” and he needed “a little bit of time to prepare for [the] hearing[.]” Respondent-father argues that though counsel did not use “magic words” it was still an argument invoking due process. While we agree that neither magic words nor specific citations to constitutional provisions are required to preserve a constitutional argument, it does require more than use of the word “fair.”

Much of respondent-father’s argument focuses on the fact that it appears father was never served with the summons and petition in the underlying case in which the trial court adjudicated the neglect and dependency of the minor children. Respondent-father is correct that our record does not show any return of service or affidavit of service upon him in that case.² Respondent-father implies that the trial court never acquired personal jurisdiction over him in the underlying neglect and dependency matter, since he was not served and never personally appeared although even his brief acknowledges that “[a]dmittedly, it appears . . . [he] was aware that a proceeding was taking place.” In addition, respondent-father notes that DSS’s failure to serve him is inexplicable, since he “was incarcerated in North Carolina prisons throughout the life of this case” and “everyone knew where he was and where to send

² We do note that the summons has a handwritten note by respondent-father’s name which reads, “mailed cert.” The summons is followed in the record by a Certified Mail Receipt sent to respondent-father at a correctional institution.

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his mail.” Assuming that respondent-father was not served, we would agree that the failure to serve him with the underlying action is disturbing. But, as respondent-father also acknowledges, “the failure to acquire personal jurisdiction over . . . [him] in the underlying action is not fatal to the trial court’s jurisdiction in the termination action.” In any event, respondent-father failed to preserve any constitutional argument since he did not raise it before the trial court.

Alternatively, respondent-father argues the trial court abused its discretion in denying his motion to continue, particularly because “the record in this case does not establish that . . . [he] was ever served in the underlying action.” “A trial court’s decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation.” *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005) (citation omitted).

Again, any lack of service of process upon respondent-father in the underlying proceeding regarding neglect and dependency is not directly relevant to this case. Here, the petition to terminate respondent-father’s parental rights was filed on 22 February 2016, and he was served. The hearing was held on 5 May 2016. Respondent-father was incarcerated during all of the proceedings in the underlying neglect and dependency proceeding and this case, and his tentative release date is

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November of 2018. Respondent-father's counsel informed the court that he had written to respondent-father "as soon as" he received the petition to terminate parental rights, the two had "several correspondence[s]" during the months leading up to the proceeding, and they had a meeting that morning. Furthermore, a termination petition must be tried within 90 days from filing unless continued based upon a specific finding of "extraordinary circumstances" to justify the delay. *See* N.C. Gen. Stat. § 7B-1109(d) (2015). Only about two weeks remained in the 90 day period, and respondent-father has not demonstrated how an additional two weeks would have made any difference in his defense. Based upon these facts, respondent-father and his counsel had ample time to communicate, and indeed, actually did so. Furthermore, respondent-father has not identified any "extraordinary circumstances" which would justify delay of the trial beyond the two weeks remaining in the 90 days set by North Carolina General Statute § 7B-1109(d). Accordingly, we conclude that the trial court's denial of respondent-father's motion to continue was not an abuse of the court's discretion. The arguments regarding the denial of respondent-father's motion to continue are overruled.

III. Respondent-Mother's Appeal

Respondent-mother argues that the trial court erred in terminating her parental rights on the ground that she willfully left the children outside of the home

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for more than 12 months without making reasonable progress regarding the conditions that led to the children's removal.

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. Findings of fact supported by competent evidence are binding on appeal even though there may be evidence to the contrary. However, the trial court's conclusions of law are fully reviewable de novo by the appellate court.

In re D.T.L., 219 N.C. App. 219, 220, 722 S.E.2d 516, 517 (2012) (citations, quotation marks, and brackets omitted). North Carolina General Statute § 7B-1111(a)(2) allows termination where:

The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2015).

Respondent-mother notes evidence of the progress she made during the time her children were out of her care, but the trial court found "she does not have housing, income or transportation. . . . [She] never successfully addressed her substance abuse issue and continued to engage in criminal activity during the pendency of this case." Respondent-mother argues her brother allows her to live with him when she works

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for him, and this is sufficient housing for the children. Yet a DSS social worker testified that respondent-mother's housing was a "very unstable" situation and that though respondent-mother had claimed before she was going to live with her brother, she did not actually live with him, and it was only "[a]s of last week" that respondent-mother was again residing there. Furthermore, respondent-mother did not challenge many other findings, which are binding on this Court. See *In re J.M.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006) ("If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court." (citations and quotation marks omitted)). These unchallenged findings address respondent-mother's lack of income, failure to complete substance abuse assessments, and repeated incarcerations, so we conclude the trial court properly based a ground for terminating respondent-mother's parental rights on North Carolina General Statute § 7B-1111(a)(2). See N.C. Gen. Stat. § 7B-1111(a). As the trial court properly found one ground for termination, we need not address respondent-mother's argument regarding neglect. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006) ("[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." (citation and quotation marks omitted)).

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Respondent-mother also argues that the trial court abused its discretion in concluding that termination of her parental rights was in the children's best interests. Respondent-mother argues she has a strong bond with George and Ethan and it is unlikely the children will lose any stability by merely remaining in the custody of a relative with whom respondent-mother arranges visitation. "The decision to terminate parental rights is vested within the sound discretion of the trial [court] and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005).

"After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2015). Here, the trial court acknowledged the strong bond respondent-mother has with George and Ethan but also found the bond was unhealthy. The trial court also made detailed findings for each of the factors set forth in North Carolina General Statute § 7B-1110(a) including the children's ages, their high likelihood of adoption, their strong bond with their placement providers, and their detrimental bond with respondent-mother. *See* N.C. Gen. Stat. § 7B-1111(a)(2). The trial court did not abuse its discretion in determining it was in the best interests of the children for respondent-mother's parental rights to be terminated. Respondent-mother's arguments are overruled.

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IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Chief Judge McGEE and Judge McCULLOUGH concur.

Report per Rule 30(e).