

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1257

Filed: 5 July 2017

Wilkes County, Nos. 15 JT 03-04

IN THE MATTER OF: G.M.C., T.L.C.

Appeal by respondent from order entered 2 September 2016 by Judge David V. Byrd in Wilkes County District Court. Heard in the Court of Appeals 8 June 2017.

Erika Leigh Hamby, for Wilkes County Department of Social Services, petitioner-appellee.

Battle, Winslow, Scott & Wiley, P.A., by M. Greg Crumpler, for guardian ad litem.

Assistant Appellate Defender Joyce L. Terres, for respondent-appellant.

CALABRIA, Judge.

Respondent-mother appeals from an order terminating her parental rights. For reasons stated herein, we affirm.

I. Factual and Procedural Background

Wilkes County Department of Social Services (“DSS”) became involved with respondent and the two juveniles, G.M.C. (“Grace”) then four months old and T.L.C.

Opinion of the Court

(“Tyler”)¹ then approximately two years old, in May 2014 after receiving a report from law enforcement indicating respondent was found at her residence in an intoxicated condition that prevented her from caring for Grace. After providing services to the family for several months, DSS filed petitions on 6 January 2015 alleging that the juveniles were neglected. On 12 March 2015, the court entered an order adjudicating the juveniles as neglected and placing them in the custody of DSS. Following a permanency planning hearing on 17 August 2015, the court filed an order on 3 September 2015 continuing custody with DSS, relieving DSS of any further requirement to pursue efforts to eliminate the need for placement of the juveniles, and approving a concurrent permanent plan of placement with an approved caregiver or adoption.

On 3 February 2016, DSS filed a petition to terminate respondent’s parental rights. After several hearings, on 2 September 2016 the court entered an order terminating respondent’s parental rights on grounds that (1) she neglected the juveniles and the neglect is likely to be repeated; and (2) she failed to pay a reasonable portion of the cost of care for the children while in foster care. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1), (3) (2015). On 30 September 2016, respondent filed notice of appeal from the order terminating her parental rights.

¹ Stipulated pseudonyms are used to protect the identities of the juveniles and for ease of reading.

II. Petition for Writ of Certiorari

Although respondent filed timely notice of appeal from the trial court's order, she failed to include a certificate of service. She therefore, contemporaneously with her appellate brief, filed a petition for writ of certiorari. In *Hale v. Afro-Am. Arts Int'l, Inc.*, 335 N.C. 231, 436 S.E.2d 588 (1993), our Supreme Court held that the failure to include a certificate of service with the notice of appeal is a defect that may be waived by the appellee's failure to object or otherwise raise the issue and by participating in the appeal. Here, neither DSS nor the guardian ad litem objected or moved for dismissal of the appeal. Accordingly, we deem the petition for writ of certiorari to be unnecessary and we dismiss the petition.

III. Cessation of Reunification Efforts

Respondent first contends that the court erred by ceasing reunification efforts. At the time of the permanency planning review hearing on 17 August 2015, the trial court, in determining a disposition, was required to consider certain criteria and make written findings of fact regarding those that are relevant, including whether "efforts to reunite the juvenile with either parent clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(d)(3) (2013)². "This Court

² The General Assembly amended the statute in 2016 to replace the word "futile" with the word "unsuccessful." See 2016 N.C. Sess. Laws 94 § 12C.1(g1).

Opinion of the Court

reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition.” *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). Respondent argues that the court’s findings of fact do not support the court’s determination to cease reunification efforts.

The findings of fact in the permanency planning order show that Grace was ten months old and Tyler was three years old at the time of the hearing in August 2015. They had been in the care of DSS since 16 February 2015, when they were adjudicated as neglected juveniles. Both parents entered into family service case plans in an effort to improve the conditions that caused the children to be placed in the custody of DSS. The father had done nothing toward completion of any of the items on his case plan. Respondent had participated in a few of the items on her case plan but “still ha[d] many things to complete” at the time of the hearing. The children had been out of a parent’s home since 30 May 2014, during which time DSS was offering case management services to the family. The father had visited the children only two times, and respondent had four visits. According to the DSS report incorporated into the order and findings of fact, each parent was allowed two visits per month. Neither parent was providing any support for the children. Respondent has a history of mental health issues. She had an assessment on 13 February 2015

Opinion of the Court

which recommended that she participate in individual therapy. She had only recently begun this therapy. She had sporadic contact with the social worker.

Respondent challenges the accuracy of finding of fact number 7, in which the court found that she had many items to complete in her case plan. She submits that the DSS court report shows she had completed most of the items. Our review of the report reveals that the service plan required respondent to: (1) obtain and maintain a stable residence; (2) complete mental health and substance abuse assessment and follow recommendations; (3) submit to random drug screens; (4) maintain SSI benefits; (5) contact her social worker twice a month; (6) complete parenting classes; and (7) sign a voluntary child support order. Of these, the court report showed only item (6) had full compliance. Respondent had obtained a residence but it had not yet been approved by DSS. She completed the mental health and substance abuse assessment but failed to follow recommendations. She submitted to only half of the drug screens ordered each month. She failed to contact the social worker on a regular basis. She had not signed a voluntary support agreement. We conclude the court's finding of fact is supported by evidence.

Respondent next argues that even if it is assumed that the remaining findings of fact are supported by competent evidence, they are insufficient to support a conclusion that reunification efforts would be futile or inconsistent with the children's safety. She submits that the court's findings fail to explain why placement with

Opinion of the Court

respondent immediately or within six months was not in the children's best interest, and fail to take into consideration her changed conditions. She also asserts that the deficiencies in the permanency planning order were not cured by the termination order.

We are not persuaded by respondent's arguments. In addition to the findings of fact cited above, the DSS report incorporated into the permanency planning order indicates that respondent has significant mental health issues which have not been treated, including diagnoses of post-traumatic stress disorder and dissociative personality disorder. Although respondent denies having a history of substance abuse, she has a criminal history involving illegal controlled substances, and DSS first became involved with the children after respondent was found in an intoxicated condition by law enforcement. The parents had also been receiving case management services from DSS since August 2014 and had made little progress in correcting the problems addressed by the case management services. For several months, respondent did not have suitable housing for the children.

Moreover, incomplete findings of fact in a permanency planning order "may be cured by findings of fact in the termination order" when both orders are appealed and considered together. *In re L.M.T.*, 367 N.C. 165, 170, 752 S.E.2d 453, 457 (2013). The termination order additionally found that although respondent completed a mental health and substance abuse assessment, which recommended that she participate in

Opinion of the Court

group and individual therapy to deal with trauma she endured during her life, no documents or evidence showed that she participated in the therapy. Although respondent was required by the case plan to meet with the social worker at least one time per month, respondent met with the social worker only four times since the children have been in DSS custody. We conclude the termination order cured deficiencies in the permanency planning order.

IV. Relative Placement

Respondent next contends that the court erred by failing to give priority consideration to placement with relatives in the permanency planning order. N.C. Gen. Stat. § 7B-903 governs placement with relatives as a dispositional alternative and provided at the time of the permanency planning hearing:

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

Opinion of the Court

N.C. Gen. Stat. § 7B-903(a)(2) (2014).³ We have construed Chapter 7B as requiring the court to give first consideration to placement with a relative and to make a specific finding that placement with a relative is not in the child's best interest before it places the child with a non-relative. *In re L.L.*, 172 N.C. App. 689, 701, 616 S.E.2d 392, 399 (2005), *abrogated on other grounds*, *In re T.H.T.*, 362 N.C. 446, 665 S.E.2d 54 (2008).

We conclude that the court did comply with the statutory mandate. In the permanency planning order, the court found that there may be maternal relatives in South Carolina who would be suitable placements for the children and that the process to bring the children into South Carolina under the Interstate Compact on the Placement of Children ("ICPC") had been initiated so that home study of these parents could be obtained. In the termination of parental rights order entered months later, the court found that the maternal great-grandparents expressed interest in adopting Tyler, that they are licensed foster parents, that the maternal great-grandparents have been in contact with Tyler and DSS, and that a home study was requested as part of the ICPC process. The court further recommended that DSS strongly consider the maternal great-grandparents adopting Tyler.

V. Clear and Convincing Evidence

³ Effective 1 October 2015, this identical provision was re-codified as N.C. Gen. Stat. § 7B-903(a1) (2015). 2015 Sess. Laws 136 § 10.

Opinion of the Court

Respondent next contends that the conclusion that grounds existed to terminate her parental rights is not supported by sufficient findings of fact based on clear and convincing evidence. We review an order terminating parental rights to determine whether the findings of fact are supported by clear, cogent and convincing evidence and whether the findings of fact support the adjudicatory conclusions of law. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6, *disc. review denied sub nom.* *In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). We review the conclusions of law *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009). We review the disposition portion of the order for abuse of discretion. *In re I.T.P-L.*, 194 N.C. App. 453, 463, 670 S.E.2d 282, 287 (2008), *disc. review denied*, 363 N.C. 581, 681 S.E.2d 783 (2009).

We first address the court's termination of respondent's parental rights on the ground she neglected the children. A juvenile is neglected if he does not receive proper care, supervision or discipline from his parent, has been abandoned, is not provided necessary medical or remedial care, or lives in an environment injurious to his welfare. N.C. Gen. Stat. § 7B-101(15) (2015). "A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). The court must consider evidence of any changed circumstances since the time of a prior adjudication of neglect and the likelihood of repetition of the neglect.

Opinion of the Court

In re Ballard, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). The court “must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

Respondent argues that several findings of fact are not supported by evidence, and that several of them fail to show neglect or the likelihood of repetition of neglect. Specifically, she contests as lacking evidentiary support the following findings: (1) the portion of finding number 8 in which the court found respondent was charged with criminal child neglect; (2) the portion of finding of fact number 9 in which the court found DSS began providing case management services in August 2014 because of concerns about respondent’s parenting skills and domestic violence; and (3) the portion of finding number 19 stating respondent seized an electronic toy from Tyler to make him cry and then recorded and posted on the internet a video of him crying, together with a statement that it showed mistreatment of the children by DSS. She also contends that the order does not contain findings of fact to show she was neglecting the children at the time of the hearing or that there was a probability of repetition of neglect.

A finding of fact is conclusive on appeal if it is supported by competent evidence, even though there may be evidence to support a contrary finding. *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984). Moreover, a

Opinion of the Court

finding of fact that is not challenged by a party is presumed to be correct and supported by evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982). When ample other findings of fact support an adjudication, “erroneous findings unnecessary to the determination do not constitute reversible error.” *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

Respondent does not challenge finding of fact number 15 as unsupported by evidence. This finding shows that respondent failed to comply with her case plan in that: (1) although she had undergone mental health and substance abuse assessments which recommended that she undergo therapy, participate in long-term counseling, and accept responsibility for her actions, she has not participated in long-term counseling and has not accepted any responsibility for the children being placed in DSS custody; (2) she submitted to only ten of twenty-four random drug screens since the children have been in DSS custody; (3) although she was required to meet her social worker face-to-face at least one time per month, respondent only had four face-to-face meetings with the social worker since the children have been in custody of DSS; and (4) she failed to maintain regular visitation with the juveniles, having attended only nine of twenty possible visits with the children. Other portions of finding of fact number 19 that are not challenged by respondent as lacking evidentiary support indicate that during visits, respondent pays more attention to

Opinion of the Court

Tyler and has limited interaction with the children. She did not bring appropriate food for the juveniles during some visits.

In reaching its conclusion of law that grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), the court stated it considered not only the original adjudication of neglect, but also the evidence of any changes which may have occurred since that time, and concluded that based on respondent's refusal to acknowledge any responsibility for the children's removal from her home or deficiencies in her parenting ability, her behaviors during visits, and failure to complete items on her case plan, "it is unlikely that a family unit comprised of the children and either or both of their biological parents will be formed or reformed in the foreseeable future" and that "return of the children to the home of a parent would expose the children to the same or similar lack of appropriate parenting and acts/omissions which gave rise to the children being placed in DSS custody." We have held that when the findings of fact show that the parent lacked initiative to comply with court directives, failed to perceive the need for services, and failed to recognize or acknowledge the issues that contributed to the original adjudication of neglect and removal from the home, a court may properly conclude that a child will not be safe and receive proper care or supervision if returned to the parent's home. *See In re J.W.*, 173 N.C. App. 450, 465, 619 S.E.2d 534, 545 (2005), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006).

Opinion of the Court

We hold the court's unchallenged findings of fact support the court's conclusion of law. Since we affirm termination of parental rights on this ground, we need not consider respondent's arguments concerning the other ground found by the court to exist. *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).

VI. Termination of Parental Rights

Respondent lastly contends that the court abused its discretion by concluding that it was in the children's best interest to terminate her parental rights. Upon adjudicating the existence of one or more grounds for termination of a parent's parental rights, a court must then make a discretionary determination whether terminating the parent's rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2015). In making this determination, the court is to consider the age of the juvenile, the likelihood of adoption of the juvenile, the bond between the juvenile and the natural parent, the quality of the relationship between the juvenile and the proposed permanent placement, and "[a]ny relevant consideration." *Id.* While the court must consider all of these factors, it is required to make written findings of fact only regarding those factors which are relevant and have an impact upon the court's decision. *In re D.H.*, 232 N.C. App. 217, 221-22, 753 S.E.2d 732, 735 (2014). Respondent argues the court abused its discretion by terminating respondent's parental rights instead of choosing the less drastic option of custody or guardianship.

Opinion of the Court

A court may be reversed for abuse of discretion only if the appellant can show that its ruling “is so arbitrary that it could not have been the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). In the instant case, the court made findings of fact regarding the factors listed in N.C. Gen. Stat. § 7B-1110(a). It found that the children were two and one-half years old and four and one-half years old at the time of the termination hearing, and that they were four months old and two years old when they were removed from the home. It also found that neither parent cared for them for over two years. With regard to the likelihood of adoption, the court found that Grace had been in the same placement since 28 May 2015, and had adapted very well and bonded to the potential adoptive parents. Although Tyler was currently not in a potentially adoptive placement, his maternal great-grandparents have expressed an interest in adopting him, have become licensed foster parents, and have been in contact with DSS and Tyler. The court found that there is a substantial likelihood that the children will be adopted in accordance with the permanent plan. Finally, the court found that neither parent has a close, loving relationship with either child. As these findings reflect a thoughtful and rational decision, we find no abuse of discretion.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).