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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-42

Filed: 18 July 2017

Orange County, Nos. 13 JT 5; 15 JT 3

IN THE MATTER OF: J.Y., A.M.

Appeal by respondent father from orders entered 13 October 2016 by Judge Beverly Scarlett in District Court, Orange County. Heard in the Court of Appeals 29 June 2017.

Holcomb and Stephenson, LLP, by Angenette Stephenson, for petitioner-appellee Orange County Department of Social Services.

Parker Poe Adams & Bernstein, LLP, by Matthew P. Weiner, for guardian ad litem.

Robert W. Ewing for respondent-appellant.

STROUD, Judge.

Respondent-father appeals from the trial court's orders terminating his parental rights to James¹ (born May 2011) and Amy (born October 2014). We affirm.

Facts

¹ We use the pseudonyms chosen by the parties to protect the juveniles' privacy.

On 9 January 2013, Orange County Department of Social Services (“OCDSS”) took James into nonsecure custody and filed a juvenile petition alleging neglect and dependency. The petition described a “history of escalating domestic violence” between respondent-father and respondent-mother (“respondents”) in James’ presence and accused respondents of abusing alcohol and marijuana in front of the child. It alleged that respondent-father had “reported mental health issues to police[,]” that he had been committed to a psychiatric hospital in December 2012 and was currently incarcerated, and that he had “express[ed] that he has no intention of following court-ordered conditions of release[.]” The petition accused respondent-mother of at least twice obtaining public funds to relocate to New York with James only to return to, or remain with, respondent-father. According to OCDSS, respondent-mother’s “pattern is to go to New York long enough for OCDSS to close her case, and then returning with the child to the same violent home situation[.]”

The trial court adjudicated James a neglected juvenile² by order entered 26 April 2013. The court made findings of specific violent incidents between respondents from May 2012 through January 2013, including an incident on 26 December 2012 which led to respondent-father’s involuntary commitment and an “affray” on 8 January 2013 which resulted in respondent-father’s arrest and incarceration. The court observed that respondents “fail to acknowledge the impact their actions have

² The court declined to adjudicate the allegation of dependency.

had on the juvenile” and “are not forthcoming and honest with [OCDSS].” It further found that respondent-father “is only sporadically compliant with mental health recommendations and does not consistently take his medications” despite two involuntary commitments.

At disposition, the trial court noted respondent-father’s “multiple diagnos[e]s including ADHD, Paranoid Schizophrenia, Major Depression, Marijuana Dependence and Major Depression with Psychotic Features.” It ordered respondent-father to obtain a psychological evaluation from April Harris-Britt, Ph.D., and comply with her treatment recommendations; participate in domestic violence services through Dr. Harris-Britt’s practice; submit to random drug screens; and take all of his prescribed medications. The court further ordered respondents to comply with their OCDSS case plans and to have no contact or communication with each other.

Based on respondents’ initial progress, the trial court established a permanent plan of reunification for James and rescinded its no-contact order so respondents could live together and receive joint services and visitations. Despite occasional reports of additional domestic violence between respondents, OCDSS began a trial home placement for James on 11 September 2014. Respondent-mother gave birth to Amy in early October 2014, after which respondents’ engagement with services deteriorated.

On 9 January 2015, respondent-mother threw a plate of food at respondent-father in the presence of James and Amy. Some of the food landed on Amy. Respondent-father, in turn, punched respondent-mother in the eye. The incident was reported to OCDSS on 12 January 2015. In a meeting with the social worker, respondent-mother denied any domestic violence. Respondent-father admitted the incident. The social worker was also advised that respondent-mother had been smoking marijuana since Amy was born. Respondents agreed to a safety plan that required respondent-father to move out of the home. Respondent-father violated the plan by returning to the residence.

Respondent-father appeared in court with James on 15 January 2015 for a previously-scheduled permanency planning review hearing. He informed the court that respondent-mother was en route to New York with Amy, where she intended to reside while respondent-father remained in North Carolina with James. The social worker discovered and notified the court that respondent-mother was still in North Carolina but did not plan to attend the hearing. The court directed OCDSS to take custody of both children and file a juvenile petition regarding Amy. Respondent-father initially refused to surrender James to sheriff's deputies and shouted obscenities while holding the child against his chest. As the social worker was leaving with James, respondent-father threw a full bottle of juice at her, striking her in the back. OCDSS placed James and Amy together in a foster home.

OCDSS filed a petition on 16 January 2015 alleging Amy was neglected and dependent. The trial court adjudicated Amy neglected on 1 May 2015. In a subsequent dispositional order, the court found respondent-father had been charged with driving while impaired (“DWI”) and malicious conduct by a prisoner on 29 March 2015, while respondent-mother was with him in the car. Having misled OCDSS about their relationship, respondents acknowledged they were living together. The court ordered respondent-father to move out of the home and ordered respondents to “cease all contact with each other.”

After a permanency planning review hearing on 8 May 2015, the trial court ceased reunification efforts as to James and changed his permanent plan to guardianship with a concurrent plan of adoption. The court held a permanency planning hearing for Amy on 2 July 2015. It ceased reunification efforts and established concurrent permanent plans of guardianship and adoption for her by order entered 20 July 2015.

OCDSS moved to terminate respondent-father’s parental rights to James on 8 July 2015, asserting these statutory grounds for termination: (1) neglect; (2) failure to make reasonable progress to correct the conditions that led to James’ removal from the home in January 2013; and (3) dependency. N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6) (2015). On 24 July 2015, OCDSS moved to terminate respondent-father’s parental

rights as to Amy on grounds of neglect and dependency. Respondent-father filed no response to either motion. *See* N.C. Gen. Stat. § 7B-1107 (2015).

After hearing evidence on 17 December 2015 and 9 August 2016, the trial court entered orders terminating respondent-father's parental rights to James and Amy on 13 October 2016. As to each child, the court found grounds for termination based on neglect, failure to make reasonable progress, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6). The court further determined that terminating the parental rights of respondent-father was in the children's best interests³. *See* N.C. Gen. Stat. § 7B-1110(a) (2015). Respondent-father timely appealed to this Court.

Discussion

On appeal, respondent-father claims the trial court erred in adjudicating grounds to terminate his parental rights to James and Amy under N.C. Gen. Stat. § 7B-1111(a). This Court reviews an adjudication to determine (1) whether the court's findings of fact are supported by clear, cogent, and convincing evidence, and (2) whether its findings support its conclusions of law. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004). Uncontested findings of fact are deemed supported by the evidence and are binding on appeal. *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007). In addition, "erroneous findings unnecessary to the

³ The trial court also apparently terminated the parental rights of the children's mother by separate order, but that order does not appear to be in the record and she is not a party to this appeal.

determination do not constitute reversible error” where an adjudication is supported by sufficient additional findings grounded in competent evidence. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). The adjudication of any single ground for termination under N.C. Gen. Stat. § 7B-1111(a) will support an order terminating parental rights. *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). Therefore, if we uphold one of the adjudicated grounds for termination, we need not review any additional grounds found by the trial court. *Id.* at 9, 618 S.E.2d at 246.

I. Appeal in File No. 13 JT 5, *In re J.Y. (James)*

Respondent-father challenges the trial court’s adjudication of grounds to terminate his parental rights to James based on neglect under N.C. Gen. Stat. § 7B-1111(a)(1) and dependency under N.C. Gen. Stat. § 7B-1111(a)(6). He offers no claim or argument that the court erred in adjudicating grounds to terminate his parental rights to James under N.C. Gen. Stat. § 7B-1111(a)(2) for failure to make reasonable progress to correct the conditions that led to James’ removal from the home in January 2013.⁴ Because respondent-father does not contest the adjudication under N.C. Gen. Stat. § 7B-1111(a)(2) as to James, it is “binding on appeal.” *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005); *see also In re P.L.P.*, 173 N.C. App. at

⁴ Respondent-father challenges the court’s adjudication under N.C. Gen. Stat. § 7B-1111(a)(2) as to Amy, arguing that (1) OCDSS did not allege this ground in its motion to terminate his parental rights to Amy in File No. 15 JT 3, and (2) Amy had not been removed from the home for twelve months at the time OCDSS filed the motion.

9, 618 S.E.2d at 246. And since “only one ground is necessary to support the termination, we need not address” the trial court’s adjudications under N.C. Gen. Stat. § 7B-1111(a)(1) and (6). *In re J.A.A.*, 175 N.C. App. at 74, 623 S.E.2d at 50. We affirm the termination order as to James in File No. 13 JT 5.

II. Appeal in File No. 15 JT 3, *In re A.M. (Amy)*

Respondent-father challenges each of the trial court’s three grounds for terminating his parental rights to Amy. Regarding the adjudication of neglect under N.C. Gen. Stat. § 7B-1111(a)(1), respondent-father contends the court failed to consider the evidence of his changed circumstances at the time of the termination hearing. We disagree.

Under N.C. Gen. Stat. § 7B-1111(a)(1), the court may terminate parental rights upon a finding that “[t]he parent has . . . neglected the juvenile.” A neglected juvenile is one who “does not receive proper care[or] supervision” from the juvenile’s parent or who “lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2015). To support an adjudication under N.C. Gen. Stat. § 7B-1111(a)(1), “[n]eglect must exist at the time of the termination hearing[.]” *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 729 (2007). When a child has been in an out-of-home placement for a significant period of time at the time of the hearing, an adjudication under N.C. Gen. Stat. § 7B-1111(a)(1) may be supported by “evidence of prior neglect and [of] the probability of a repetition of neglect” if the child were

returned to the parent's care. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). "The trial court must . . . consider any evidence of changed conditions" since the prior adjudication of neglect and "make an independent determination of whether neglect authorizing termination of the respondent's parental rights existed at the time of the termination hearing." *Id.* at 715, 716, 319 S.E.2d at 232, 233 (emphasis added).

In challenging the court's conclusion that he neglected Amy under N.C. Gen. Stat. § 7B-1111(a)(1), respondent-father does not dispute Amy's prior adjudication as a neglected juvenile on 1 May 2015. He instead objects to the court's conclusion that Amy would be likely to experience a continuation or repetition of that neglect if she were returned to respondent-father's care. *See generally In re Pope*, 144 N.C. App. 32, 36, 547 S.E.2d 153, 156 (addressing "whether the trial court's findings of fact support a *conclusion of law* that there is a probability of repetition of neglect if the minor child were returned to Respondent" (emphasis added)), *aff'd per curiam*, 354 N.C. 359, 554 S.E.2d 644 (2001). Citing respondents' history of domestic violence as "[t]he primary reason why the children were taken into custody" by OCDSS, respondent-father contends that the hearing evidence revealed "no acts of domestic violence by the respondent father in over a year." Rather, respondent-father had been living with his parents since November 2015, while respondent-mother had relocated to New York. In addition to noting this change in circumstances, respondent-father

asserts he was “attending therapy” and “participating in vocational rehab” at the time of the August 2016 termination hearing.

We find respondent-father’s argument without merit. The trial court’s findings recount respondents’ prior conduct leading to James and Amy’s removal from the home and their prior adjudications as neglected juveniles. The court made additional findings about the results of respondent-father’s psychological evaluation by Dr. Harris-Britt in 2013 and her expert testimony at the termination hearing. In addition to incorporating Dr. Harris-Britt’s written report by reference into its order, the court found :

17. . . .

- a. Respondent father was diagnosed with: Axis I and II, Schizoaffective Disorder; Personality Disorder, NOS, paranoid traits and on Axis IV, unemployed, lack of financial resources, CPS involvement, history of exposure to domestic violence in family of origin and domestic violence, perpetrator.

. . . .

- d. Respondent father has “no friends, only associates” and he feels unsafe most of the time.
- e. He reports feeling depressed, hopeless and helpless. . . .
- f. Respondent father becomes preoccupied with what others think or feel about him. He said there are times he would think about hurting other people but that it is against his religion to do so.

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- g. Respondent father admits to being prone to anger but he does not know where it comes from.

....

- k. Respondent father has unrealistically high expectations of children. He believes in corporal punishment and yelling as punishments for children.

....

- m. "Without persistent, consistent therapeutic interventions and medication management, his (Respondent father's) prognosis for sustained improvements is poor."

....

- 18. While seeing Dr. Harris-Britt for the evaluation (2013) and others in her office for therapy and parenting instruction (2014), he did well but has not been consistent with medication management since leaving her practice.
 - 19. Respondent father has attended therapy a few times, but believes his current therapist cannot help him because she has problems herself.
 - 20. Respondent father continues to be unemployed and does not have housing for himself. . . .
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- 22. Respondent father lives in Richmond County, North Carolina. He has refused to meet with the Richmond County DSS Social Worker.
 - 23. Respondent father has not provided OCDSS any verification that he is engaged in any services.

24. Respondent father reports that he is on probation for eighteen (18) months secondary to the following offenses: two DWI's, Assault with a Deadly Weapon, and Assault/threat against a government official.⁵ He has a forthcoming court date for DWLR (Driving While License Revoked).
25. Respondent father does not pay child support as he is on disability and is unemployed.
26. [Amy] is twenty-two (22) months old. She has been in foster care since she was three (3) months old. . . .

Because respondent-father does not contest these evidentiary findings, they are binding on appeal. *In re H.S.F.*, 182 N.C. App. at 742, 645 S.E.2d at 384.

As quoted above, the trial court's findings directly address respondent-father's circumstances at the time of the termination hearing. The findings present both respondent-father's psychological diagnoses and his poor prognosis absent "persistent, consistent therapeutic interventions and medication management." They depict the deterioration of respondent-father's mental health after his disengagement with services through Dr. Harris-Britt's practice in 2014. They further reflect respondent-father's present lack of mental health treatment and medication management, his ongoing involvement with the criminal justice system, and his lack of employment or independent housing. We hold that the court's findings

⁵ The court found that respondent-father committed the two DWIs on 29 March 2015 and 5 September 2015, subsequent to Amy's removal from the home in January 2015. Respondent-father was also convicted of assault on a government official and assault with a deadly weapon on 2 November 2015.

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of fact support a conclusion that respondent-father is likely to repeat his neglect of Amy if she were returned to his custody and care. *See In re K.D.*, 178 N.C. App. 322, 328-29, 631 S.E.2d 150, 155 (2006).

Having upheld the trial court's adjudication under N.C. Gen. Stat. § 7B-1111(a)(1), we need not review respondent-father's arguments regarding the two additional grounds for termination found by the court. *In re P.L.P.*, 173 N.C. App. at 9, 618 S.E.2d at 246. We affirm the termination of respondent-father's parental rights to Amy in File No. 15 JT 3.

AFFIRMED.

Chief Judge McGEE and Judge ARROWOOD concur.

Report per Rule 30(e).