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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-163

Filed: 1 August 2017

Mecklenburg County, No. 16 JA 266

IN THE MATTER OF: J.C.C.

Appeal by respondent-father from orders entered 23 August and 4 October 2016 by Judge Ty M. Hands in Mecklenburg County District Court. Heard in the Court of Appeals 11 July 2017.

Senior Associate County Attorney Keith S. Smith, for Mecklenburg County Department of Social Services, Youth and Family Services, petitioner-appellee.

Parker Poe Adams & Bernstein LLP, by Matthew W. Wolfe and E. Bahati Mutisya, for guardian ad litem.

Jeffrey William Gillette for respondent-appellant father.

BRYANT, Judge.

Where the trial court's adjudication of neglect and dependency was based on findings of fact that were stipulated to by respondent-father, we affirm.

Respondent-mother¹ and respondent-father had three children together, “Cathy” born April 2012, “Lucy”² born January 2014, and J.C.C. (“Jason”)³ born June 2016. Respondents have a history with Child Protective Services (“CPS”) dating back to 2012.

CPS first became involved with the family in April 2012 when respondent-mother tested positive for opiates during the delivery of Cathy. Cathy also tested positive for epatdrine (a form of amphetamine) and marijuana at birth. Cathy was taken into nonsecure custody and adjudicated neglected and dependent in Gaston County by consent order on 7 February 2013 due to issues of substance abuse and domestic violence. Cathy was in foster care for about fifteen months before being returned to her parents for a trial placement on 31 January 2014. After a hearing held 29 April 2014, the trial court returned custody of Cathy to respondents against the recommendation of the Gaston County Department of Social Services (“DSS”).

In January 2014, respondent-mother gave birth to the family’s second child, Lucy, and again, respondent-mother tested positive for marijuana at the time of delivery. On 21 November 2014, eleven-month-old Lucy became unresponsive while respondent-mother was bathing her and Cathy in the bathtub. Respondent-mother

¹ Respondent-mother is not a party to this appeal.

² Cathy and Lucy are not a part of the underlying juvenile case and are not subjects of this appeal.

³ Pseudonyms are used to protect the juveniles’ privacy and for ease of reading. N.C. R. App. P. 3.1(b) (2017).

first called a neighbor for help, and twenty minutes later called 911. Respondent-mother tested positive for opiates, benzodiazepines, and marijuana. Respondent-father was not present at the time of the incident, but smelled of alcohol when he later arrived at the home. Lucy passed away the next day as a result of drowning. On 24 November 2014, DSS took Cathy into emergency custody. Respondent-mother was indicted on charges of second-degree murder in relation to Lucy's death.

Due to substance abuse concerns as to respondent-father during his visitations with Cathy, DSS filed a new juvenile petition. On 23 June 2015, Cathy was adjudicated neglected and dependent for the second time. The trial court found that respondent-father "was aware of Respondent/mother's use of controlled substances" and that respondent-father "[was] not fit and proper to supervise the juvenile in that [he] ha[d] been untruthful to investigators, and on several occasions, when [he] interacted with law enforcement, he had an odor of alcohol on his person." Respondent-father was ordered to comply with a case plan which required him to submit to a parental capacity evaluation and follow all recommendations; obtain a mental health assessment and follow all recommendations; complete an approved parenting class and demonstrate the skills learned; complete a substance abuse assessment and follow all recommendations; submit to random drug screens; obtain and maintain safe and stable housing; obtain and maintain stable employment; and sign consents for release of information to DSS.

Respondent-mother gave birth to Jason in June 2016 while still incarcerated on charges relating to Lucy's death. At the time, respondent-father was residing with his mother in Concord, North Carolina. Soon after Jason's birth, the Mecklenburg County Department of Social Services, Youth and Family Services ("YFS") filed a juvenile petition alleging that Jason was neglected and dependent and took him into nonsecure custody. The petition alleged that respondent-father had not addressed the issues that led to Cathy being placed back in Gaston County DSS custody in 2014, in that respondent-father had not engaged in a parenting capacity evaluation and parenting education, had not engaged in a substance abuse treatment program, had missed several random drug screens since October 2015 and submitted at least one diluted sample, was not engaged in any mental health program or therapy, had not maintained independent housing, and had not notified YFS that he had relocated to Concord, North Carolina until the 5 April 2016 court hearing.

A hearing on the petition was held on 26 July and 19 August 2016. By order entered 23 August 2016, the trial court adjudicated Jason neglected and dependent. Respondent-father stipulated to the factual findings as to neglect and dependency. In a disposition order entered 4 October 2016, the trial court ordered a primary plan of adoption with a secondary plan of reunification. Respondent-father appeals.

Respondent-father's counsel has filed a no-merit brief on respondent-father's behalf pursuant to Rule 3.1(d) of the North Carolina Rules of Appellate Procedure. Counsel states that "[a]fter a conscientious and thorough review of the record on appeal, [he] has concluded that the record contains no issue of merit on which to base an argument for relief that would not be frivolous." *See* N.C. R. App. P. 3.1(d) (2017) ("In an appeal taken pursuant to N.C.G.S. § 7B-1001, if, after a conscientious and thorough review of the record on appeal, appellate counsel concludes that the record contains no issue of merit on which to base an argument for relief and that the appeal would be frivolous, counsel may file a no-merit brief."). Respondent-father's counsel requests that this Court conduct an independent examination of the case for possible error. In accordance with Rule 3.1(d), counsel sent a letter to respondent-father on 15 March 2017, advising him of counsel's inability to find error and of his right to file his own arguments directly with this Court. Respondent-father has not filed his own written arguments and a reasonable period of time for him to have done so has passed.

In addition to seeking review pursuant to Rule 3.1(d), counsel directs our attention to two potential errors: (1) whether respondent-father's adoption of the stipulations during the adjudication hearing was knowing and voluntary; and (2) whether the trial court improperly delegated the task of fact finding to YFS.

After careful review, we are unable to find any possible prejudicial error by the trial court in adjudicating Jason neglected and dependent. The transcript of the adjudication hearing demonstrates that respondent-father participated in the editing of the stipulations and that respondent-father answered in the affirmative when the trial court inquired as to whether he had the opportunity to consult with counsel and if he agreed with the stipulated facts. *See Matter of G.T.*, ___ N.C. App. ___, ___, 791 S.E.2d 274, 276–77 (2016) (concluding that the findings of fact were presumed to be supported by competent evidence and were binding on appeal where the respondent-mother did not dispute the fact that her stipulation to the findings of fact was proper); *In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d. 7, 9 (2013) (“[S]tipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact.” (citation omitted)). Thus, the trial court’s adjudication was based on findings of fact that were supported by the record and stipulated to by respondent-father. Furthermore, nothing in the record indicates the trial court improperly delegated the task of fact finding to YFS, and we dismiss that contention. Accordingly, we affirm the trial court’s adjudication and disposition orders.

AFFIRMED.

Judges HUNTER, JR., and MURPHY concur.

IN RE: J.C.C.

Opinion of the Court

Report per Rule 30(e).