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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-18

Filed: 19 June 2018

Guilford County, Nos. 15 JT 292, 294

IN THE MATTER OF: K.K.-K.C. & K.E.C. II

Appeal by respondent-father from order entered 25 September 2017 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 31 May 2018.

No brief filed for petitioner-appellee Guilford County Department of Health and Human Services.

Leslie Rawls for respondent-appellant father.

Winston & Strawn LLP, by Danielle Williams, for guardian ad litem.

BERGER, Judge.

Respondent-father appeals from an order terminating his parental rights to two minor children, K.K.-K.C. ("Kenneth") and K.E.C. II ("Keith").[1] Respondent-father contends the trial court erred in terminating his parental rights because the Guilford County Department of Health and Human Services ("GCDHHS") failed to

[1] Pseudonyms are used throughout to protect the identity of the children pursuant to N.C.R. App. P. 3.1(b), and for ease of reading.

present clear, cogent, and convincing evidence that (1) Respondent-father was incapable of providing for the children, and that it was reasonable that his incapacity would continue for the foreseeable future; (2) the trial court's conclusions of law are not supported by findings of fact that the children were neglected; (3) the evidence does not support the findings of fact that Respondent-father did not make reasonable progress in his case plan for the past twelve months; and (4) he had the ability to pay for a reasonable portion of the cost of the children's care. The children's mother is not a party in this appeal. We affirm the trial court.

Factual and Procedural Background

Respondent-father is the father of two of the six children included in the initial petition filed by GCDHHS. Keith was born in July 2012; Kenneth in September 2014. From 2013 through 2015, GCDHHS received multiple child protective services reports related to Respondent-father. Most of these reports and subsequent investigations stem from domestic violence between Respondent-father and the mother of the minor children, violent behavior by Respondent-father, or violent incidents involving the Respondent-father.

On September 16, 2013, GCDHHS received a report that Respondent-father attempted to stab the mother, and received a police report detailing the incident. On January 2, 2014, the mother attempted to stab Respondent-father while under the influence of cocaine and alcohol and in Keith's presence. Keith was also present

during another incident in which Respondent-father assaulted the mother while Respondent-father was high on cocaine. A subsequent report concerned an incident in which Respondent-father was intoxicated and holding Keith during a physical altercation with his relatives. On September 13, 2015, GCDHHS received a report detailing a physical altercation and shooting incident between Respondent-father and the biological father of the mother's sixth child in the presence of the children, leading to the removal of the children.

On September 15, 2015, GCDHHS filed juvenile petitions alleging that the minor children were neglected and dependent because they were exposed to a substantial risk of physical injury due to their parents' inability to provide supervision or protection, and were granted nonsecure custody of the children. On January 28, 2016, the trial court entered an order adjudicating the children neglected and dependent juveniles, and ordering Respondent-father to comply with the conditions of a service agreement with GCDHHS. On April 21, 2016, following a permanency planning hearing, the trial court entered an order relieving GCDHHS of reunification efforts and establishing a permanent plan of adoption with a concurrent plan of reunification.

On November 8, 2016, GCDHHS filed a petition to terminate parental rights, alleging the following grounds for termination: (1) the juveniles were neglected; (2) Respondent-father willfully left the juveniles in foster care or placement outside of

the home for more than twelve months without showing reasonable progress in correcting the conditions that led to the removal of the juveniles; (3) the juveniles had been placed in GCDHHS's custody and Respondent-father, for a continuous period of six months next preceding the filing of the petition, had willfully failed to pay a reasonable portion of the cost of care of the juveniles although physically and financially able to do so; (4) Respondent-father failed to legitimate the juveniles; and (5) Respondent-father was incapable of providing for the care and supervision of the juveniles such that the juveniles were dependent. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (5)-(6) (2017). The trial court entered an order on September 25, 2017 terminating Respondent-father's parental rights to the juveniles. Respondent-father filed timely notice of appeal.

Analysis

Respondent-father contends the trial court erred in finding that grounds existed to terminate his parental rights. Because we conclude that the trial court correctly found grounds to terminate Respondent-father's parental rights on the basis of dependency, we do not reach Respondent-father's remaining arguments on appeal. *See In re N.T.U.*, 234 N.C. App. 722, 733-34, 760 S.E.2d 49, 57, *disc. review denied*, ___ N.C. ___, 763 S.E.2d 517 (2014).

> 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. We then

> consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (citations and quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004).

On appeal, Respondent-father does not challenge that termination of his parental rights is in the children's best interests. Accordingly, we deem this part of the argument waived and limit our review to the adjudicatory stage of the proceeding. N.C.R. App. P. 28(b)(6); *see also In re A.H.*, ___ N.C. App. ___, ___, 794 S.E.2d 866, 873 (2016), *disc. review denied*, 369 N.C. 562, 798 S.E.2d 749 (2017). "Under N.C. Gen. Stat. § 7B-1111(a), the trial court need only find that one statutory ground for termination exists in order to proceed to the dispositional phase and decide if termination is in the child's best interests." *In re L.A.B.*, 178 N.C. App. 295, 298-99, 631 S.E.2d 61, 64 (2006) (citation omitted).

A "dependent juvenile" is defined in part as "[a] juvenile in need of assistance or placement because . . . the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2017). Section 7B-1111(a)(6) permits a trial court to terminate parental rights upon finding

> [t]hat the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile

> is a dependent juvenile . . . , and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6) (2017).

Here, Respondent-father does not dispute the trial court's finding that he was incapable of caring for the juveniles at the time of the termination hearing, nor does he dispute the finding that he did not present an appropriate alternative child care arrangement. These findings are therefore binding on appeal. *See In re A.H.*, ___ N.C. App. at ___, 794 S.E.2d at 881-82 ("Unchallenged findings of fact are binding on appeal." (citation and quotation marks omitted)).

Respondent-father does, however, challenge the trial court's finding that there was a reasonable probability that his incapability to care for the juveniles would continue for the foreseeable future due to his incarceration.

"Incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision." *In re P.L.P.*, 173 N.C. App. 1, 10, 618 S.E.2d 241, 247 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006) (citation and quotation marks omitted).

> [W]hile a parent's imprisonment is relevant to the trial court's determination of whether a statutory ground for termination exists, it is not determinative. Termination of

> parental rights based upon N.C. Gen. Stat. § 7B-1111(a)(6) does not require that the parent's incapability be permanent or that its duration be precisely known. Instead, this ground for termination merely requires that there is a *reasonable probability* that such incapability will continue for the foreseeable future.

In re N.T.U., 234 N.C. App. at 735, 760 S.E.2d at 58 (citation and quotation marks omitted).

The trial court made numerous findings relevant to its determination that there was a reasonable probability that Respondent-father's incapability would continue for the foreseeable future based on a variety of factors, not limited to Respondent-father's incarceration:

> 28. [GCDHHS] identified needs that [Respondent-father] needed to address while in prison in order to work toward reunification. [GCDHHS] offered a limited service agreement, which was by necessity, limited to those services available to [Respondent-father] while incarcerated, and those tasks which he may be able to complete while incarcerated. . . . [Respondent-father] entered into his limited service agreement on October 21, 2015, which contains the following terms and conditions, as to which [Respondent-father] has made progress or lack thereof, as indicated below:
>
> a. Substance/Alcohol Abuse - [Respondent-father] was previously incarcerated at Piedmont Correctional Facility located in Salisbury, North Carolina until he was released on or about May 23, 2016. While incarcerated at Piedmont Correctional Facility, [Respondent-father] had been in segregation since September 3, 2015. Following his release from Piedmont Correctional, [Respondent-father] was arrested on new charges and held in the Guilford County Jail in Greensboro, North Carolina. [Respondent-father]

reported that he went to one [Alcoholics Anonymous] meeting . . . in August 2016, but did not receive documentation for his attendance. When asked why he delayed in signing up for [Alcoholics Anonymous], [Respondent-father]'s response was that he delayed because he thought he was getting out of jail sooner.

[b.] Housing/Environment/Basic Physical Needs - [Respondent-father] received a charge in Rowan County on February 16, 2016 of Burning Personal Property, of which he was subsequently convicted. After being released from prison on or around May 23, 2016, [Respondent-father] was transferred to Guilford County Detention to await trial on criminal charges to include but not limited to the following: Habitual Felon, Felony Robbery with [a] Dangerous Weapon, Felony [Conspiracy to Commit] Robbery with [a] Dangerous Weapon, and Felony Possession of a Firearm by Felon. . . . [Respondent-father] was released from jail on or about September 30, 2016, because all charges were dropped on the count that [Respondent-father] was on parole at that time and his ankle bracelet showed that he was not in the vicinity during the time the crime occurred. He contacted the Social Worker following his release and provided a new address. [Respondent-father] has since incurred new criminal charges since his release from incarceration on September 30, 2016, in Richland County, Columbia, South Carolina. [Respondent-father] is currently incarcerated in the Alvin S. Glenn Detention Center in South Carolina.

. . . .

[43.]h. [Respondent-father]'s neglect of the juveniles [Kenneth and Keith] has been ongoing since removal and has continued through the present date, including but not limited to the following:

(1) [Respondent-father] has been incarcerated for the majority of the case, and unavailable to provide [Kenneth and Keith] with proper care and supervision.

(2) [Respondent-father] has a criminal history that includes multiple convictions for violent and drug related offenses.

(3) [Respondent-father] has unaddressed substance abuse issues and domestic violence issues. If [Respondent-father] has mental health issues that have contributed to his dangerous and criminal behavior, they remain unidentified because [Respondent-father] has not submitted to a parenting/psychological evaluation.

(4) [Respondent-father] lacks stable, safe, and appropriate housing for [Kenneth and Keith].

(5) [Respondent-father] is not employed and does not have other verifiable income sufficient to support his basic physical needs and the basic physical needs of [Kenneth and Keith].

(6) [Respondent-father] is not providing [Kenneth and Keith] with financial support and is not otherwise providing those children with any of their basic physical needs.

(7) [Respondent-father], less than one month after his release from a prolonged period of incarceration on September 30, 2016, engaged in conduct resulting in multiple new criminal charges.

(8) [Respondent-father]'s longstanding lifestyle of dealing drugs, engaging in domestic violence with the juveniles' mother, and committing other dangerous crimes is an environment that is injurious to the welfare of his children.

i. Given [Respondent-father]'s substance abuse and domestic violence issues remain unaddressed, and that he has again engaged in conduct resulting in criminal charges so soon after being released from incarceration, there is a

> likelihood of the repetition of the neglect by [Respondent-father].
>
> . . . .
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> [46.]b. The conditions which render [Respondent-father] incapable of safely and adequately parenting [Kenneth and Keith] are his substance abuse issues, domestic violence issues, his recent incarceration in prison, and his propensity to engage in dangerous criminal behavior.
>
> (1) There is a reasonable probability that the conditions which render [Respondent-father] incapable of adequately and safely parenting [Kenneth and Keith] will continue in the foreseeable future given that [Respondent-father] has not adequately addressed any of his conditions, he has not participated in any services since his most recent release from incarceration, and the fact that he incurred new criminal charges less than one month following his release from incarceration and is currently incarcerated in Columbia, South Carolina and asserts that he will be released in July; the [c]ourt cannot rely on such assertions. In the event he is released, [Respondent-father] does not have employment, a verifiable source of sufficient income, or housing appropriate for [Kenneth and Keith] and there is no reason to believe those conditions will improve in the near future.

The trial court also made findings of fact detailing Respondent-father's criminal history, which included convictions of four counts of possession with intent to sell/deliver controlled substances, possession of cocaine, possession of stolen goods, breaking or entering a motor vehicle, and breaking and entering with intent to injure. Following the filing of the juvenile petitions in this case, Respondent-father was

convicted of simple assault and burning personal property, and was awaiting trial on multiple charges in South Carolina.

Respondent-father challenges the trial court's finding that his incarceration was likely to continue for the foreseeable future, pointing to his own testimony that, based on his attorney's plea negotiations with the State, he anticipated his release in approximately one month. However, Respondent-father also testified that there was no written plea agreement in that case, and acknowledged that whether he would receive a plea bargain was ultimately a matter of the trial court's discretion.

Here, the trial court was free to weigh the evidence and make reasonable conclusions regarding Respondent-father's testimony in light of the offenses against him and Respondent-father's criminal history. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) ("The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom."). The trial court took judicial notice of a previous order entered in the case in which it found that the charges on which Respondent-father was being held included felony armed robbery, felony receiving stolen goods valued over $10,000.00, felony possession of a weapon during commission of a violent crime, and possession of contraband while in prison. The serious nature of those charges lends additional support to the trial court's finding that Respondent-father's incapability to care for the children as a result of his

incarceration was likely to continue for the foreseeable future. *See In re N.T.U.*, 234 N.C. App. at 735, 760 S.E.2d at 58.

In addition to Respondent-father's incarceration, the trial court found that his substance abuse, domestic violence issues, and propensity to engage in dangerous criminal behavior also rendered him incapable of caring for the children, and that his failure to address those issues would likely render him incapable for the foreseeable future. Respondent-father has not challenged these findings of fact, nor has he argued that those findings could not support an adjudication of dependency.[2] The above-listed findings support the trial court's conclusion that grounds existed to terminate Respondent-father's parental rights on the basis of dependency.

While Respondent-father challenges the trial court's adjudication of the existence of the other grounds for termination of his parental rights, we need not review those challenges given our determination that the trial court correctly adjudicated the existence of dependency as a basis for termination. *In re L.A.B.*, 178 N.C. App. at 298-99, 631 S.E.2d at 64; *see also In re N.T.U.*, 234 N.C. App. at 733-34,

[2] Respondent-father does assert in his brief that, "[w]ith respect to [Respondent-father]'s post-release conduct, he expressed the intent to obtain a job and work his case plan." However, this assertion is not tantamount to specifically challenging the evidentiary support for the trial court's finding that Respondent-father lacked employment and a verifiable source of income if he was released from incarceration, and the finding is therefore binding. *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005) ("[R]espondent has failed to specifically argue in her brief that [the three challenged findings] were unsupported by evidence. She has, therefore, abandoned her appeal of those findings of fact." (citing N.C.R. App. P. 28(b)(6))).

760 S.E.2d at 57. Accordingly, the trial court's order terminating Respondent-father's parental rights is affirmed.

Conclusion

The trial court did not err in finding grounds existed to terminate Respondent-father's parental rights to the juveniles, Kenneth and Keith, based on his incapability to properly care for them at the time of the hearing and in the foreseeable future.

AFFIRMED.

Judges DILLON and DAVIS concur.

Report per Rule 30(e).