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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1211

Filed: 17 July 2018

Randolph County, Nos. 15 JT 115-16

IN THE MATTER OF: S.A.A. and L.M.A.

Appeal by Respondents from order entered 2 August 2017 by Judge Robert M. Wilkins in Randolph County District Court. Heard in the Court of Appeals 28 June 2018.

Melissa Starr Livesay for Petitioner-Appellee Randolph County Department of Social Services.

Sean P. Vitrano for Respondent-Appellant father.

Mark L. Hayes for Respondent-Appellant mother.

Winston & Strawn LLP, by Amanda L. Groves, for guardian ad litem.

DILLON, Judge.

Respondents (“Mother” and “Father”), the mother and father of the juveniles S.A.A. and L.M.A. (“Sara” and “Laura”)¹, each appeal from an order terminating their parental rights. After careful review, we affirm.

¹ Pseudonyms are used to protect the identity of the juveniles and for ease of reading. See N.C. R. App. P. 3.1(b).

In September 2015, the Randolph County Department of Social Services (“DSS”) filed petitions alleging that Sara and Laura were neglected and dependent juveniles due to Respondents’ substance abuse issues. DSS claimed that Respondents had used illegal substances in the presence of the juveniles, and that Mother had untreated substance abuse issues involving multiple substances. DSS stated that it requested that Mother submit to random drug screens, but she failed to do so. DSS further stated that there was a history of domestic violence between the Respondents. DSS claimed that Father once shot Mother with a gun in the presence of the juveniles and that Mother had taken out several domestic violence protection orders against Father. Finally, DSS alleged that Respondents each had a criminal history which included convictions involving illegal substances, and both were on probation. DSS obtained non-secure custody of the juveniles.

Eight months later, in May 2016, the trial court adjudicated Sara and Laura to be neglected and dependent juveniles. At disposition, the trial court ordered Respondents to each undergo a series of steps to further reunification efforts.

In October 2016, the trial court entered a permanency planning review order. The trial court found that Mother was minimally participating in services ordered by the trial court, and Father was not participating in any services. The trial court determined that Respondents were acting inconsistent with the health and welfare of the juveniles. Accordingly, the trial court ceased reunification efforts and changed

the permanent plan for Sara and Laura to a primary permanent plan of adoption and a secondary permanent plan of guardianship.

Almost a year later, in August 2017, the trial court entered an order in which it determined that grounds existed to terminate Respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), (a)(2) (willful failure to make reasonable progress), and (a)(7) (abandonment) (2015). The trial court additionally found that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) (failure to pay support) to terminate Father's parental rights. The trial court further concluded that it was in the juveniles' best interests that Respondents' parental rights be terminated. Respondents appeal.

I. Father's Appeal

Father argues the trial court erred by concluding that grounds existed to terminate his parental rights. We are not persuaded.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005). We review the trial court's 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).

In the instant case, the trial court concluded that grounds existed to terminate Father's parental rights based on neglect. N.C. Gen. Stat. § 7B-1111(a)(1).

"Neglected juvenile" is defined as:

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; . . . or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2015). Generally, "[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child 'at the time of the termination proceeding.'"

In re L.O.K., 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). When, however, as here, "a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, 'requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.'" *Id.* "In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect." *Id.*

Opinion of the Court

Here, in the order terminating Father's parental rights, the trial court took judicial notice of the combined adjudicatory and dispositional order in which Sara and Laura were adjudicated neglected. The trial court further noted that in order to effect reunification, Father was ordered to maintain stable housing, obtain a substance abuse assessment and follow all recommendations, submit to random drug screens, complete a mental health assessment and follow all recommendations, complete parenting classes, and attend domestic violence counseling. The trial court made the following findings relevant to Father's failure to comply with these requirements:

57. [Father] was informed about the nature of these proceedings and knew or should have known that he had lost custody of his minor children and had to participate in the court process and cooperate with [DSS] to regain custody. [Father] has been represented by counsel throughout this process, and there is no evidence that [Father] was incompetent to work with his counsel in navigating this process.

58. Since the outset of this case, [Father] has not maintained safe, stable housing for the minor children. . . . [Father] is currently incarcerated and has been for the past three months.

. . .

61. By and through his testimony, [Father] admitted he has never complied with parenting classes.

62. By and through his testimony, [Father] admitted that he [has] not engaged in any form of substance abuse treatment.

63. By and through his testimony, [Father] acknowledged he had been asked to submit to random drug screens by [DSS], and that he tested positive for cocaine on October 2, 2015. [Father] acknowledged he had not attended a requested drug screen on October 28, 2015 or on December 15, 2015.

64. There is no evidence that [Father] complied with a mental health assessment or complied with any subsequent recommendations.

65. [Father] has not visited with the minor children since January 2016. [Father] had been awarded visitation and contact with the children up until the September 21, 2016 Permanency Planning Hearing when his visits were suspended by the Court.

Father does not challenge these findings and we are bound by them on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (stating that unchallenged findings are deemed supported by competent evidence and are binding on appeal). Moreover, we review only those findings necessary to support the trial court's determination that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Father's parental rights. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240-41 (2006) (stating that erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

The trial court's unchallenged findings demonstrate that Father wholly failed to comply with the trial court's orders. Specifically, Father failed to attend substance abuse treatment, tested positive for cocaine, failed to attend requested drug screens,

failed to obtain a mental health assessment, did not participate in parenting classes, and failed to regularly visit with his children. The trial court's order set forth requirements to rectify the conditions which led to the removal of the juveniles and to effect reunification. It necessarily follows that Father's failure to comply with these requirements supports a determination that neglect would repeat should Sara and Laura be returned to his care. *See In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) ("Relevant to the determination of probability of repetition of neglect is whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of [the] children.") (alteration in original).

Father argues that the trial court "overlooked" his periodic incarceration and how it affected his ability to show interest in his children's welfare. We disagree. The trial court found as fact that Father "has been incarcerated for the last three months, but during the times he was free from incarceration and available to participate in services and treatment, he failed to do so." Father does not challenge this finding and it is binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. It is apparent from the trial court's findings of fact that although Father was incarcerated at the time of the termination hearing, he wholly failed to take any action to effect reunification during those periods of time when he was not incarcerated. Further, Father affirmatively contends that, for some time prior to his incarceration, he voluntarily evaded contact with his children because he was "on the lam" and running

from the police. Based on his wholesale failure to comply with the trial court's recommendations when he was not incarcerated, we conclude the trial court properly determined that there was a high likelihood of repetition of neglect. *See In re M.A.W.*, 370 N.C. 149, 154, 804 S.E.2d 513, 517 (2017) (finding that the father's failure to "follow through consistently with the court's directives and recommendations" when not incarcerated supported a conclusion that neglect was likely to repeat). Accordingly, we hold the trial court did not err by determining that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Father's parental rights.

The trial court's conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) is sufficient in and of itself to support termination of Father's parental rights. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Furthermore, the trial court made appropriate findings in determining that termination of Father's parental rights was in Sara's and Laura's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2015). Accordingly, we affirm the trial court's order terminating Father's parental rights.

II. Mother's Appeal

Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), Mother's counsel has filed a no-merit brief on her behalf in which counsel states that he made a "conscientious and thorough review of the record on appeal" and was unable to identify any issues of merit on which to base an argument for relief. Mother's counsel

requests that this Court conduct an independent examination of the case. In accordance with Rule 3.1(d), counsel wrote Mother advising her of counsel's inability to find reversible error, his filing of a "no-merit" brief, and of Mother's right to file her own arguments directly with this Court within thirty days of the date of the filing of the no-merit brief. Mother has not filed her own written arguments.

In our discretion, we have elected to review the transcript and record to search for any possible prejudicial error in the trial court's order terminating Mother's parental rights. After our search, we have been unable to find prejudicial error. The trial court's uncontested findings of fact demonstrate that the juveniles had previously been adjudicated neglected. To address the neglect and effect reunification, the trial court ordered Mother to, among other things, obtain treatment for substance abuse, attend parenting classes, and seek mental health and domestic violence counseling. The trial court found, however, that Mother failed to successfully complete substance abuse treatment, parenting classes, or any mental health or domestic violence counseling. Based on its findings of fact, the trial court determined that Mother had neglected Sara and Laura, that she had not made any significant progress in addressing the issues which led to their removal, and that the likelihood of neglect being repeated was high. Accordingly, the trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Mother's parental rights. Our review of the record reveals that the termination order includes

sufficient findings of fact, supported by clear, cogent, and convincing evidence, to support this conclusion.

The trial court's conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) is sufficient in and of itself to support termination of Mother's parental rights. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Furthermore, the trial court made appropriate findings in determining that termination of Mother's parental rights was in Sara's and Laura's best interests. *See* N.C. Gen. Stat. § 7B-1110(a). Accordingly, we affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).