IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-779

Filed: 16 April 2019

Yadkin County, Nos. 16 JA 52, 16 JT 52

In the Matter of: A.A.H., a Minor Juvenile.

Appeal by Respondent-Mother from orders entered 16 October 2017 by Judge David V. Byrd and 9 May 2018 by Judge Robert J. Crumpton in Yadkin County District Court. Heard in the Court of Appeals 27 February 2018.

J. Brett Lane for Petitioner-Appellee Yadkin County Human Services Agency.

Kathleen M. Joyce for Respondent-Appellant Mother.

Paul W. Freeman, Jr., for guardian ad litem.

DILLON, Judge.

Respondent-Appellant Mother appeals from the trial court's orders ceasing reunification efforts and terminating parental rights with respect to her minor son, Andrew.[1] After thorough review of the evidence before the trial court, we affirm.

I. Background

[1] Pursuant to N.C. R. App. P. 42, a pseudonym is used.

On 11 September 2014, Andrew was born to Mother and Father and remained in their care for the first eighteen (18) months of his life. Mother and Father were married at the time and are still married today.

In March 2016, New Hanover Department of Social Services ("NHDSS") received a report that Mother and Father were not caring for Andrew appropriately. On 6 July 2016, following a positive drug screen of both parents, NHDSS filed a petition alleging Andrew was a neglected juvenile based on continued concerns with "issues of substance abuse, mental health, instability, homelessness, and lack of parenting skills." On 3 October 2016, at a hearing on the matter, both parents stipulated that Andrew was a neglected juvenile and the trial court entered an order declaring the same (the "October 3 Order"). The October 3 Order further directed Mother to undergo a series of steps to comply with her Out of Home Family Services Agreement ("OHFSA"), to create a healthy environment for Andrew, and to learn how to care for him. The matter was then transferred to Yadkin County, where the parents had moved.

In May 2017, following a number of hearings, the trial court found that Mother had made substantial and consistent progress and authorized the Yadkin County Human Services Agency ("YCHSA") to allow unsupervised overnight visitation and trial home placement of Andrew with Mother. Father, however, was not allowed to be present during these visits. Specifically, while Mother had repeatedly tested

negative in her drug tests,[2] Father was in jail from April 2017 to July 2017 after his probation was revoked due to a failed drug test. The trial court ordered that Father was not to be allowed unsupervised visitation with Andrew until he progressed on his own OHFSA and substance abuse issues.

On 7 September 2017, at a permanency planning hearing, the trial court heard evidence that Mother had been noncompliant with her OHFSA and that Father had been allowed at Mother's residence during one of Andrew's unsupervised overnight visits. Despite Father's continued substance abuse, Mother and Father both maintained an intent to raise Andrew together.

On 16 October 2017, after reviewing this evidence and a report prepared by Andrew's guardian ad litem ("GAL"), the trial court entered an order ceasing reunification efforts between Andrew and his parents and altering Andrew's permanent plan to adoption (the "Cease Reunification Order").

On 6 November 2017, after a hearing and additional testimony on the matter, the trial court entered an order determining that termination of Mother and Father's parental rights was in Andrew's best interests (the "TPR Order"). Mother appeals from both the Cease Reunification Order and the TPR Order.

II. Analysis

[2] Though, as discussed below, Mother refused to take a drug test in November 2016.

Mother challenges a number of findings of fact and conclusions of law in each of the trial court's orders. We address each set of challenges in turn.

A. Ceasing Reunification

Mother contends that the trial court's decision to cease reunification efforts was abrupt and unsupported by the evidence at the hearing.

We review a trial court's decision to cease reunification efforts only to determine whether the evidence before the trial court was competent to support its findings of fact, and whether those findings of fact support its conclusions of law. *In re L.M.T.*, 367 N.C. 165, 168, 752 S.E.2d 453, 455 (2013). Findings of fact that are supported by competent evidence are conclusive on appeal and binding on this Court. *Id.*

Mother argues that the evidence did not support the trial court's findings of fact 6, 9, 11-17, and 23-25, as well as conclusions of law 3, 6, and 7.[3] Instead, Mother contends, the trial court merely adopted the language and reasoning of a report submitted by the GAL without making its own determinations.

[3] "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman,* 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Therefore, we are bound by the remaining findings of fact and do not address them here. *See In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005) ("An appellate court's review of the sufficiency of the evidence is limited to those findings of fact specifically assigned as error.").

Section 7B-906.2(d) of our General Statutes states that, in making its permanency planning decisions, the trial court must make sufficient findings with respect to whether the minor child's parent is (1) "making adequate progress within a reasonable period of time[;]" (2) "actively participating in or cooperating with the plan[;]" (3) "remains available" for the sake of the juvenile; and (4) "acting in a manner inconsistent with the health or safety of the juvenile." N.C. Gen. Stat. § 7B-906.2(d) (2017). "The trial court's written findings must address the statute's concerns, but need not quote its exact language." *In re L.M.T.*, 367 N.C. at 168, 752 S.E.2d at 455. In making its findings, the trial court may "properly consider all written reports and materials submitted in connection with said proceedings," *In re Shue*, 63 N.C. App. 76, 79, 303 S.E.2d 636, 638 (1983), so long as it does not "broadly incorporate" those reports and use them in "substitute for its own independent review," *In re M.R.D.C.*, 166 N.C. App. 693, 698, 603 S.E.2d 890, 893 (2004).

Our Court has noted that it is not "*per se* reversible error" for the trial court's findings to mirror the language of a party's submission; rather, regardless of the language used, we must determine whether the record shows that the trial court made its findings through "logical reasoning," based upon competent evidence in the record before it. *See In re J.W.*, 241 N.C. App. 44, 45-46, 772 S.E.2d 249, 251 (2015). Here, the language of the trial court's Cease Reunification Order is similar to that of the GAL's report, but the similar language is at most four words at a time, including

broad terms or phrases such as "partying and drinking" and, most commonly, "substance abuse." The wording of the Cease Reunification Order, as a whole, shows that the trial court performed its own independent review of the evidence before determining that it agreed with the GAL's report. After examining the record, we hold that, though it appears the trial court adopted some language from the GAL's report, the trial court's findings arise from its own independent review of the evidence.

We also find that the challenged findings of fact are supported by the evidence before the trial court. *See In re J.W.*, 241 N.C. App. at 46, 772 S.E.2d at 251 (stating that, where the findings of fact are based on the record before the court and logical reasoning, "it is irrelevant whether those findings appear cut-and-pasted from a party's earlier pleading or submission"). Mother challenges the following portions of the findings of fact found in the Cease Reunification Order:

> 6. [Mother] completed a substance abuse assessment and has been referred to family therapy and parenting classes but has failed to complete therapy and/or classes. . . . [Mother] is currently about ten weeks pregnant, however, [her] online social media reveals her engaging in partying and drinking.
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> . . .
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> 9. Despite an agreement with between the YCHSA [and both parents] that [Father] would not be on the premises while [Andrew] was having unsupervised overnight with [Mother], the YCHSA discovered that [Father] did in fact go to [Mother's] residence while [Andrew] was there.

. . .

11. . . . [Both parents] have not adequately addressed the conditions that led to the removal of [Andrew] from the home. . . .

12. . . . (5) on October 28, 2016, the YCHSA attempted to contact the parents regarding enrollment [in] certain parenting classes beginning on November 2, 2016, but [the parents] did not follow through with class enrollment; . . . (17) on May 19, 2017, the YCHSA provided intake information to a [family counselor] and transported [Andrew] but [Mother] did not attend; . . . (23) . . . [Andrew's therapist] expressed concerns regarding [Father's] drug dependency and [Mother's] enabling behaviors . . . .

13. Barriers to achieving [reunification] include . . . [Mother's] substance abuse issues, both [parents'] failure to complete their respective case plans, and [Mother] allowing [Father] onto the premises during an overnight visitation with [Andrew] when she had specifically agreed that she would not do so.

14. [Both parents] have demonstrated cyclical patterns of behavior where one or both of them improves for a period of time before relapsing into substance abuse.

15. . . . [Mother] will not cut ties with [Father] who refuses to admit that he has a substance abuse problem or to seek treatment for his substance abuse problem.

16. The GAL has expressed concerns about [Andrew's] safety around [Father] due to [Father's] continued drug use since his release from jail.

17. It is unlikely that [Andrew] could return to the home now or within the next six months for the reasons state herein.

> . . .
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> 23. Facts supporting not returning [Andrew] to the home immediately include those enumerated above.
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> 24. The best plans of care to achieve a safe and permanent home for [Andrew] within a reasonable period of time are: a primary plan of adoption . . . .
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> 25. The visitation plan . . . in the best interest of [Andrew is] one hour, biweekly to be supervised by the YCHSA . . . .

Advancing the same arguments used to challenge the findings of fact, Mother challenges the following conclusions of law:

> 3. The return of [Andrew] to the home at this time or within the next six months is contrary to the health, safety, welfare and the best interests of [Andrew] for reasons stated herein.
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> . . .
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> 6. The primary permanent plan for [Andrew] should be adoption . . . .
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> 7. Termination of the parental rights of [Mother and Father] is appropriate and should be pursued at this time.

Mother contends, in large part, that the trial court's findings and conclusions are unsupported because she presented ample evidence of her own efforts and progress toward reunification with Andrew. To wit, we concede that the evidence shows a considerable amount of progress made by Mother. Mother asserts that the trial court's findings demonstrate that it failed to consider the evidence that

contradicted or provided complete context for the evidence upon which it relied. However, Mother's arguments do not negate the existence of other evidence upon which the court could find in favor of a permanent plan of adoption. In the face of inconsistent evidence, it is the trial court's role to determine credibility and weigh the conflicting evidence presented:

> Almost always, the parent will present evidence of her progress and improvement, and in many cases, she has actually made some progress. Likewise, the petitioner will present evidence regarding the parent's failures and omissions. The trial court's role is to determine the credibility of all of this evidence and to weigh all of it and then to make its findings of fact accordingly. Although the evidence will be inconsistent, the trial court's ultimate order must be consistent in its findings of fact such that they will support its conclusions of law to come to an ultimate determination.

In re A.B., 245 N.C. App. 35, 47, 781 S.E.2d 685, 693 (2016).

The trial court heard evidence from a social worker assigned to Andrew's case, Andrew's GAL, and Andrew's therapist. The evidence showed that Mother was recommended and referred to therapy for "depression and anxiety," as well as substance abuse issues. Mother began attending these sessions, but stopped going without being formally discharged. Mother also agreed to take parenting classes but never attended them. Furthermore, evidence was presented that Mother had continued a lifestyle of "partying and drinking," and had been involved in this behavior while pregnant with her second child.

Further, the trial court appropriately found a lack of progress with respect to the parents' substance abuse. Both parents tested positive for methadone in June 2016. Though Mother's subsequent drug tests in July, August, and October of 2016 were negative, she refused to take a random drug test in November 2016. Father also continued to abuse drugs, even after time spent in jail. Despite Father's continued substance abuse, Mother maintained an intent to stay married to Father and to raise Andrew with him, even if it meant exposing Andrew to Father's substance abuse and/or delaying Andrew's return home. Given these conditions, Andrew's therapist and his GAL each expressed concerns about Andrew's future safety if returned to the parents' care.

Mother argues that the trial court places too much weight on Father's presence during one overnight visit, where Mother was never clearly told his presence was not allowed. But the trial court heard evidence that Father and Mother both admitted Father was present during an overnight visit at Mother's residence and that both parents were told on "multiple occasions" that Father was not to be on Mother's property while Andrew was there. Finding of fact 10, an unchallenged finding, reflects evidence that Andrew also exhibited signs of behavioral regression following many of his overnight visits with Mother.

Adoption is an appropriate plan given Mother and Father's progress as determined by the trial court. And where adoption is recommended for a minor child

who has been in DSS (or, here, YCHSA) custody for fourteen (14) months, proceedings for termination of parental rights must be initiated. *See* N.C. Gen. Stat. § 7B-906.1(f) (2017) ("In the case of a juvenile who is in the custody or placement responsibility of a county department of social services and has been in placement outside the home for 12 of the most recent 22 months . . . .").

In order to reunite with Andrew, Mother was ordered to: (1) comply with the terms of her OHFSA; (2) comply with her clinician's recommendations; (3) submit to drug screens "as requested;" (4) complete parenting classes; and (5) obtain "stable and appropriate" housing. The evidence was sufficient to support the trial court's findings that Mother had not completed all recommended therapy and parenting classes, failed to submit to all requested drug screens, and insisted upon cohabitating with Father despite direct instructions to the contrary. We conclude that these findings support the trial court's conclusion to pursue adoption, as reunification was adverse to Andrew's health, safety, and overall best interests.

B. Termination of Parental Rights

Mother next challenges the trial court's order terminating her parental rights to Andrew. Termination of parental rights is a two-step process: First, the trial court adjudicates whether grounds exist to terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1111; then, in a dispositional stage, the trial court considers whether termination is in the best interests of the juvenile. *In re Young*, 346 N.C.

244, 247, 485 S.E.2d 612, 614-15 (1997); *see also* N.C. Gen. Stat. §§ 7B-1109, -1110, -1111 (2017) (providing detailed instructions on how courts should proceed with adjudications to terminate parental rights).

At the adjudication stage, "[t]he standard for appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings of fact support its conclusions of law." *In re S.D.*, 243 N.C. App. 65, 66, 776 S.E.2d 862, 863 (2015); *see also Matter of D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016). We review a trial court's decision in the dispositional stage regarding the best interests of the child for an abuse of discretion, reversing only where the decision is manifestly unsupported by reason. *In re L.M.T.*, 367 N.C. at 171, 752 S.E.2d at 457. Again, our Court's task on review is not to reweigh the evidence; rather, it was the trial court's role to "pass[ ] upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968) (citation omitted).

1. Grounds for Termination

First, Mother argues that the trial court's findings of fact in the adjudicatory stage are unsupported by the evidence, contain numerous erroneous statements, and wholly do not show that Andrew was a neglected juvenile or that Mother willfully left Andrew in foster care as grounds for termination of her parental rights.

Section 7B-1111 states that the trial court may terminate a parent's parental rights upon a finding that either "the parent has . . . neglected the juvenile" or "the parent has willfully left the juvenile in foster care . . . for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2) (2017). A child is neglected where its parent does not provide proper care, supervision, or discipline. *See* N.C. Gen. Stat. § 7B-101 (2017). Neglect is to be determined based on the best interest of the child and the parent's fitness at the time of the termination proceeding, taking into due account any prior neglect adjudications as well as any evidence of changed conditions and the probability of repetition of neglect. *In re Ballard*, 311 N.C. 713-15, 319 S.E.2d 227, 231 (1984). A finding of a parent's willfulness in leaving a child in another's care does not require fault by that parent, only that the parent was capable yet unwilling to make reasonable progress in the judgment of the court. *Matter of J.A.K.*, ___ N.C. App. ___, ___, 812 S.E.2d 716, 721 (2018).

Specifically, Mother assigns error to portions of findings of fact 16, 17, 21, 25, and 27 in the TPR Order:

> 16. . . . [Mother] has not completed her psychological treatment.
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> 17. [Mother] became pregnant while [Father] was incarcerated for a probation violation. [Mother] stated that she had been drinking alcohol at the time she became

> pregnant and she is unable to identify the child's father.
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> . . .
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> 21. The Court finds that both parents were capable of completing their OHFSA requirements and have had the ability to remedy the issues that led to the removal of [Andrew] from the home but they have failed to make reasonable progress since [Andrew] came into care to correct the such conditions.
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> . . .
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> 25. If [Andrew] were to be returned home, there exists a substantial likelihood of repetition of neglect for the following reasons: . . . (b) [Mother] has likewise demonstrated an inability to control her substance abuse issues as . . . she became pregnant while drinking . . . ; (c) Both parents have been diagnosed with mental health issues but neither parent has consistently sought treatment for the same and neither parent has completed treatment requirements; . . . (g) . . . [T]he parents are now seeking to co-parent two young children when they have yet to demonstrate that they can effectively co-parent one child.
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> . . .
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> 27. Neither of the parents have addressed the issues of substance abuse, instability of the home, mental health, and lack of parenting skills; hence, there exists a substantial likelihood of repetition of the same neglect that led to [Andrew] coming into care for the reasons stated supra.

Again, Mother's arguments focus primarily on the trial court's interpretation of the evidence presented. In her brief on appeal, Mother claims that the trial court's findings are "negative interpretations," "irrelevant," or "particularly harsh" in the

way they evaluate Mother's progress towards reunification. Nonetheless, the trial court's findings are reasonable in light of the evidence presented.

Neglect proceedings were initiated because NHDSS received reports that Andrew was not being properly provided for, watched over, fed, or allowed to keep a routine sleep schedule. Andrew was adjudicated neglected at the start of the proceedings, and the orders from subsequent hearings found the same. The trial court instructed Mother to undergo psychological and substance abuse treatments, which she began but did not finish without formal approval. Between the date of the Cease Reunification Order and the TPR hearing, Mother canceled multiple therapy sessions and failed to complete additional parenting classes. And Mother continued to reside with Father despite his continual pattern of substance abuse. Though Mother made some efforts to remedy her circumstances, they remained substantially similar to the conditions at the time Andrew was removed from the home. Under these circumstances, the trial court properly found a likelihood of future neglect.

Mother repeatedly references the trial court's remaining findings that she had made progress towards reunification, such as completion of a substantial amount of therapy and a number of parenting classes, and her successfully acquiring and maintaining stable housing prior to the TPR hearing. However, as the trial court also notes in an unchallenged finding of fact, "the OHFSA requirements were not developed [as a list of tasks to be checked off], but rather were developed to effect

changes . . . and remedy the behaviors of the parents that led to the removal of [Andrew] from the home." And "[a] finding of willfulness is not precluded even if [Mother] has made some efforts to regain custody of [Andrew]." *In re H.D.*, 239 N.C. App. 318, 325, 768 S.E.2d 860, 865 (2015). Based on the evidence, the trial court was not convinced that reasonable progress had been made to remedy the factors that led to Andrew's removal from Mother's care. Therefore, there was clear, cogent, and convincing evidence that Mother continued to neglect Andrew and that, despite some effort towards reunification, Mother willfully failed to make reasonable progress by completing various treatment plans and by altering her lifestyle to best suit Andrew's health and safety.

2. Andrew's Best Interests

Lastly, Mother contends that the trial court abused its discretion by concluding that termination of her parental rights was in Andrew's best interests. Section 7B-1110 contains a number of factors for which the trial court must make written findings with respect to a child's best interest. *See* N.C. Gen. Stat. § 7B-1110 (2017). Mother does not advance any argument that the trial court failed to make appropriate findings or to consider any of the factors listed in Section 7B-1110.

Instead, Mother contends that she presented the trial court with evidence that paralleled every positive finding made about Andrew's circumstances in foster care. Mother argues that she had positive employment, finances, housing, and a strong

bond with Andrew. In this respect, Mother asserts that the trial court "ignored and misrepresented evidence favorable to [Mother]." To the contrary, the trial court's findings showed that, in sum: Andrew had been adjudicated neglected and resided in foster care for a third of his life. Mother did not make reasonable progress on her OHFSA nor in remedying the troubling circumstances for which Andrew was removed. Andrew was "thriving" in his foster home, where his needs were properly met. And Mother's violations of visitation conditions, insistence upon staying with Father, and participation in "partying and drinking" while pregnant with her second child reflected willful failure to remedy her circumstances and a high likelihood of repeated neglect should Andrew return home.

It is clear from these unchallenged findings that the trial court properly considered Andrew's best interests in deciding that termination of Mother's parental rights was necessary to achieve the permanent plan of adoption, and to best tend to Andrew's health, safety, and happiness.

III. Conclusion

In sum, Mother's arguments are, essentially, that "all of [the trial court's findings]" were "refuted" by other evidence presented at the permanency planning and termination hearings. We, however, do not reweigh the evidence before the trial court on appeal. Though contradictory evidence existed, the trial court's findings of fact were based upon competent evidence and its conclusions of law logically and

consistently flowed therefrom. We affirm the trial court's orders ceasing reunification efforts between Mother and Andrew and terminating Mother's parental rights.

AFFIRMED.

Judges INMAN and COLLINS concur.

Report per Rule 30(e).