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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1005

Filed: 7 May 2019

Yadkin County, Nos. 16 JT 60-63

IN RE:

N.S.J.

N.S.J.,

S.S.J.,

E.O.J., III

All MINOR JUVENILES.

Appeal by respondent from order entered 9 July 2018 by Judge William F. Brooks in District Court, Yadkin County. Heard in the Court of Appeals 28 March 2019.

J. Brett Lane for petitioner-appellee Yadkin County Human Services Agency.

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

Peter Wood, for respondent-appellant.

STROUD, Judge.

Respondent-mother appeals from an order terminating her parental rights[1] in the minor children Nora, Ned, Sam, and Eric[2] ("the children"). We affirm.

On 5 December 2016, the Yadkin County Human Services Agency ("YCHSA") filed a juvenile petition alleging they were neglected and obtained nonsecure custody of the children. When the petition was filed, Nora and Ned were two years old; Sam was three years old; and Eric was five years old. The petition alleged the children had been left home alone, and domestic violence occurred in the children's presence. The petition further alleged that respondent was detained for shoplifting while with three of the children on 18 November 2016, arrested for driving while intoxicated on 29 November 2016, and arrested in the children's presence for assaulting a man after consuming a large quantity of vodka on the night of 2 December 2016.

Respondent-mother signed an Out-of-Home Family Services Agreement ("OHFSA") on 17 January 2017 wherein she agreed to (1) complete a substance abuse assessment, follow all treatment recommendations, and submit to random drug screens; (2) complete a clinical/psychological assessment and follow all recommendations, including therapy if necessary; (3) complete a certified parenting class; and (4) maintain stable, permanent housing for at least three months.

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[1] The trial court also terminated the parental rights of the children's father who is not a party to this appeal.

[2] We use pseudonyms to protect the juveniles' privacy and for ease of reading.

After a hearing on 26 January 2017, the trial court adjudicated the children neglected by order entered 3 February 2017. The court found the children did not receive proper care, supervision, or discipline and were exposed to a substantial risk of harm in the home "due to the parents' inability to care properly for the minor children, the parents unstable living situation(s), lack of employment and income, lack of reliable and legal transportation, continued domestic violence, continued criminal conduct, and substance abuse." The court noted that respondent was "incarcerated at the Surry County jail" at the time of the hearing. The court placed the children in the legal and physical custody of YCHSA and ordered respondent to comply with the OHFSA.

At the permanency planning hearing on 5 October 2017, the trial court established a primary plan of reunification for the children with a secondary plan of adoption. Following a hearing on 7 December 2017, however, the court changed the primary permanent plan to adoption and the secondary plan to guardianship. YCHSA filed a motion for termination of parental rights on 27 February 2018. After a hearing on 29 May 2018, the trial court entered an order terminating the rights of respondent on 9 July 2018. As grounds for terminating her parental rights under North Carolina General Statute § 7B-1111(a), the court concluded that respondent-mother had neglected the children and was likely to repeat the neglect if the children were returned to her care, and that she had willfully failed to make reasonable

progress to correct the conditions leading to the children's removal from her home on 5 December 2016. The court considered the dispositional factors in North Carolina General Statute § 7B-1110 and determined that terminating respondent's parental rights was in the children's best interests. Respondent appeals.

On appeal, Respondent contends the trial court violated her right to a fair hearing before an impartial tribunal by asking her a series of aggressive, hostile, and leading questions about her progress in meeting the conditions of her OHFSA. She argues that rather than seeking merely to clarify her testimony, the court interrogated her about her work history, substance abuse treatment, and lack of current employment "to get her to admit that she had not completed the [case] plan." Moreover, when she described telling the children they would be coming home to live with her, the court purportedly "browbeat" respondent with questions about whether it was "inappropriate" to "build [the children's] hopes up[.]" In summary, respondent contends the trial court's manner of questioning her "reasonably brought the court's impartiality into question" and denied her procedural due process.

YCHSA contends that respondent failed to preserve her argument for appeal, but even if we assume *arguendo* that the issue is properly before us and preserved, we conclude there is no merit to respondent's claim that the trial court displayed a bias against her. Respondent "confuses the trial court's duty to weigh the credibility of the evidence and to resolve the disputes raised by the evidence with improper

judicial bias." *Cox v. Cox*, 238 N.C. App. 22, 34, 768 S.E.2d 308, 316 (2014). Where, as here, the trial court served as the trier of fact, it sits in "the dual capacity of judge and juror. [The court] is to hear the evidence and pass upon its competency and admissibility as judge, and determine its weight and sufficiency as juror." *Everette v. D.O. Briggs Lumber Co.*, 250 N.C. 688, 694, 110 S.E.2d 288, 292 (1959). Moreover, "[t]he proscription against the expression of opinion by the trial judge does not attach in a trial without a jury." *Smithwick v. Frame*, 62 N.C. App. 387, 395, 303 S.E.2d 217, 222 (1983).

Respondent-mother's efforts to meet the conditions of her OHFSA — and her degree of success in doing so — were central to the court's inquiry as to both the reasonableness of her progress in correcting the conditions leading to the children's removal from her home and the probability of a repetition of neglect if the children were returned to her care. After a careful review of the hearing transcript, we are satisfied the trial court questioned respondent to clarify her testimony and resolve potential conflicts between her account of her compliance with the OHFSA and the account offered by YCHSA. We conclude respondent received a fair trial and her due process rights were not violated.

Further, respondent challenges none of the trial court's findings of fact as unsupported by the hearing evidence, and thus they are binding on this Court. *See generally Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)

(providing that uncontested findings of fact are "presumed to be supported by competent evidence and [are] binding on appeal"). These unchallenged findings detail respondent-mother's lack of compliance with the mental health and substance abuse components of her OHFSA, including recent positive screens for alcohol, her lack of stable employment during the course of the case, and her current unemployment. Because the court's findings of fact and conclusions of law support its termination of respondent-mother's parental rights, we affirm the termination order.

AFFIRMED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).