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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-8

Filed: 5 November 2019

Iredell County, Nos. 14 JT 85-86

IN THE MATTER OF: K.Z. & H.Z.

Appeal by Respondent-Father from order entered 16 October 2018 by Judge Christine Underwood in Iredell County District Court. Heard in the Court of Appeals 3 October 2019.

*Lauren Vaughan for petitioner-appellee Iredell Country Department of Social Services.*

*Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for respondent-appellant father.*

*Daniel E. Peterson for guardian ad litem.*

MURPHY, Judge.

Respondent-Father ("Omar")[1] appeals from an order terminating his parental rights to his minor children "Renee" and "Teddy." The trial court's findings of fact

[1] We use pseudonyms for all relevant persons throughout this opinion to protect the juveniles' identities and for ease of reading.

are supported by competent evidence, and those findings, in turn, support the trial court's termination of Omar's parental rights on the ground of neglect. We affirm.

**BACKGROUND**

This matter began on 3 January 2017, when the Iredell County Department of Social Services ("DSS") received a Child Protective Services report regarding Omar. The report alleged that Omar was allowing Renee and Teddy's mother, "Vicky", to take care of them in violation of a prior court order that prohibited unsupervised visits with Vicky; that both parents were using drugs; and that the condition of the juveniles' home was poor. On 11 January 2017, DSS filed petitions alleging that Renee and Teddy were neglected and dependent juveniles. The petitions alleged that the parents' home was cluttered with clothing and cigarette butts on the floor; that Vicky was concerned about the juveniles' safety because Omar was drinking daily and using drugs; that a social worker had observed the juveniles asleep during the day on a bare mattress; and that the juveniles were exhausted because they had not gotten enough sleep the previous night. The same day the petitions were filed, DSS obtained non-secure custody of Renee and Teddy.

After a hearing on 1 February 2017, the trial court entered an order adjudicating Renee and Teddy to be neglected and dependent juveniles. The trial court entered its initial disposition order on 29 March 2017 and, at that point, ordered the continued custody of Renee and Teddy with DSS. The 29 March 2017 Order also

required Omar to remedy the conditions in the home that led to or contributed to the juvenile's adjudication: completing substance abuse and psychological assessments and comply with the recommendations; submitting to random drug screens; completing parenting classes and demonstrating skills learned; maintaining safe and stable housing; and maintaining a stable income.

The trial court conducted the first review and permanency planning hearing on 28 June 2017 and set the primary permanent plan for Renee and Teddy as adoption and the secondary plan as reunification with Omar. The trial court directed DSS to make efforts to finalize the plan of adoption and authorized the filing of a petition to terminate parental rights to the juveniles. DSS filed petitions on 23 August 2017 to terminate Omar and Vicky's parental rights, alleging grounds of neglect, willful failure to pay for the juveniles' care while they were in DSS's custody, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (3), (6) (2017). Service of the petitions on Vicky was delayed because she had disappeared in February 2017 after refusing to undergo a drug screen. Although Vicky later reappeared and voluntarily relinquished her parental rights to both juveniles, the hearing on the termination of parental rights petitions was further delayed due to Omar's incarceration, first for misdemeanor child abuse in March 2017 and then for violating the terms of his probation in June 2018.

After a hearing on 24 July 2018, the trial court entered an order terminating Omar's parental rights to the juveniles on the grounds of neglect and dependency. Omar appeals.

## ANALYSIS

### A. Standard of Review

Our standard of review requires us to determine "whether the findings of fact are supported by clear . . . and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004). "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." *Id*. at 222, 591 S.E.2d at 6. It is well established that where the trial court's findings of fact are supported by competent evidence, they are binding on appeal, even though there may be some evidence to support contrary findings. *In re S.C.R*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009). Findings of fact that are not challenged on appeal are deemed conclusive and binding. *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). We review the trial court's conclusions of law in a termination of parental rights case de novo. *In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006).

**B. Findings of Fact**

The trial court made the following findings of fact in support of its conclusion that Omar neglected the juveniles:

> 9. That [Omar] has neglected the Juveniles within the meaning of N.C.[G.S.] § 7B-1111(a)(1), in that:
>
> a. The Juveniles were adjudicated neglected and dependent in an order entered on February 1, 2017. [Omar] stipulated that the findings of fact in that order were true . . . .
>
> b. The conditions in the home that led to the removal of the Juveniles included:
>
> . . . .
>
> ii. Untreated substance abuse of [Omar] and [Vicky];
>
> iii. Unsanitary and unsafe conditions in the home; and
>
> iv. Suspected exposure of the juveniles to illegal controlled substances. The children had a hair follicle drug screen on January 6, 2017, the day they were removed from their parents and placed into foster care. Both children tested positive for cocaine and marijuana . . . .
>
> c. A Dispositional Order was entered March 29, 2017. [Omar] was required by that order to correct the conditions in the home which led to the removal of the children. He was required to obtain a substance abuse assessment and mental health assessment and complete any recommended treatment, complete parenting education classes, and have stable housing and income.

d. [Omar] obtained a substance abuse assessment on June 16, 2017. It was recommended that he complete Intensive Outpatient Therapy. He failed to complete that recommended treatment in a timely fashion. Further, his drug tests showed he was not compliant with treatment. He refused to drug screen on January 6, 2017. He tested positive for hydrocodone and hydromorphone on January 12, 2017. He tested positive for cocaine and marijuana on January 24, 2017. He was in jail and did not drug screen from February 16, 2017 to March 7, 2017. He failed to show for seven drug screens between March 23, 2017 and June 14, 2017. He tested positive for cocaine on June 15, 2017. He did test negative for controlled substances and alcohol on August 14, 2017, October 3, 2017, and November 13, 2017. He then failed to show for requested drug screens on January 10, 201[8], February 2, 2018, and on February 19, 2018. On February 19, 2018, [Omar] reported problems with transportation and was offered but declined to use transportation services offered by the Department. While involved in treatment with Daymark [from] June 2017 through August 2017, he screened negative for controlled substances on 22 occasions. He eventually completed the Daymark Recovery SAIOP (Substance Abuse Intensive Outpatient Treatment Program) on September 11, 2017.

e. [Omar] tested positive for cocaine on May 15, 2017, the same day he had a visit with the minor children.

f. [Omar] continues to struggle with substance abuse, and has not participated in drug screens since November 2017. The children were previously removed from the home of the Respondent Parents due to unaddressed substance abuse by Respondent Parents. It was believed that [Omar] ha[d] addressed his substance abuse issues and the children were returned to his care. However, the children were returned to foster care a few years later for continued and

> significant substance abuse. [Omar's] significant substance abuse problem, and his failure to address that problem present a high likelihood that this problem will continue in the future and lead to future neglect of the children.
>
> g. [Omar] did obtain a mental health assessment in August 2017, and the recommendation was that he continue with his intensive substance abuse treatment.
>
> h. [Omar] completed parenting classes through SCAN in September 2017. He visited and adhered to all SCAN guidelines. Overall the visits went well. He played and interacted well with the children. He does struggle with boundaries and gets loud during the visits, but overall the visitations were positive for the children. Unfortunately, [Omar] was inconsistent with visitations between January 2017 and June 2017, missing 50 percent of the visits.
>
> . . .
>
> j. [Omar] has not had consistent contact with DSS. He did not make regular inquiries as to the children's welfare, demonstrating that the likelihood of continued neglect of the children is high should they be reunited with [Omar].

Omar contends that several portions of the trial court's findings are not supported by clear and convincing evidence.[2] He challenges the trial court's Finding of Fact 9(d), that "he failed to complete that recommended [substance abuse]

[2] Omar also disputes what he describes as the trial court's "implication" in finding of fact 9(h) that he did not make any improvement with regard to visits. Because the alleged implication is irrelevant to our analysis of the trial court's conclusion of neglect, we do not address this challenge. *See generally In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (stating that "erroneous findings unnecessary to the determination do not constitute reversible error").

treatment in a timely fashion" and "his drug tests showed he was not compliant with treatment." In challenging this finding of fact, Omar contends the dispositional order did not set a deadline to complete treatment and he completed the substance abuse treatment program in September 2017. However, the Record shows that Omar did not take the required substance abuse assessment until 16 June 2017, three months after DSS's target completion date of 2 March 2017. Accordingly, there is clear and convincing evidence Omar failed to timely start—let alone timely complete—his substance abuse treatment.

Omar next disputes the portion of Finding of Fact 9(f) that states he "continues to struggle with substance abuse," alleging the finding has no evidentiary support and that all the evidence points to the contrary. Omar asserts that he submitted to twenty-two consecutive negative drug screens while in the program, tested negative in drug screens after treatment in October and November 2017, and enrolled in follow-up programs until his incarceration. Nevertheless, there is clear and convincing evidence to the contrary.

First, there is evidence in the record that, prior to taking the assessment, but after the juveniles were taken into DSS custody, Omar continued to use cocaine and heroin and failed to take seven drug screens between 23 March 2017 and 14 June 2017. Omar tested positive for cocaine on 15 May 2017, the same day he had a visit with Renee and Teddy, and again on 15 June 2017. Second, while it is true that Omar

had 22 negative drug screens while he was in treatment with Daymark, there is also evidence in the record that he stopped submitting to drug screens shortly after his treatment at Daymark ended in November 2017. Omar failed to appear at scheduled drug screenings on 10 January, 2 February, and 19 February 2018, and did not submit to any drug screens after 13 November 2017. Omar's refusal to take requested drug screens as required by the trial court's orders supports the reasonable inference that he "continues to struggle with substance abuse," as the trial court found. *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. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject."). The trial court's Finding of Fact 9(f) is supported by clear and convincing evidence.

Omar also contests the last sentence of Finding of Fact 9(j), which states: "He did not make regular inquiries as to the [juveniles'] welfare, demonstrating that the likelihood of continued neglect of the [juveniles] is high . . . ." Omar alleges that he wrote letters to the juveniles while incarcerated and visited the juveniles regularly after June 2017. However, the social worker assigned to Omar's case testified that Omar's communication with her was inconsistent and that he never asked her about the juveniles' welfare. The social worker also testified that getting in touch with Omar was difficult and that he missed half of his visitations in the juveniles' first six

months in DSS care. Based on the social worker's testimony during the hearing, Finding of Fact 9(j) is supported by clear and convincing evidence.

**C. Conclusions of Law**

We next address Omar's argument that the trial court erred in concluding that his parental rights could be terminated on the ground of neglect. Omar contends he had completed the court-ordered requirements to be reunited with the juveniles and that the trial court erred in using his homelessness and unemployment to support its neglect conclusion. We disagree.

A trial court may terminate a father's parental rights to his children if he has neglected the juveniles. *See* N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined in part as "[a] juvenile who does not receive proper care, supervision, or discipline . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C.G.S. § 7B-101(15) (2017). 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) (citation omitted). Nevertheless, where a child has not been in the custody of the parent for a significant time period prior to the termination hearing, a trial court may terminate parental rights based upon a showing of prior neglect of the juvenile and the probability of a repetition of neglect. *Id*. We have reasoned that "[w]here the evidence shows a likelihood of repetition of

neglect, the trial court may reach a conclusion of neglect under [N.C.G.S.] § 7B-1111(a)(1)." *In re J.H.K.*, 215 N.C. App. 364, 368, 715 S.E.2d 563, 567 (2011).

Here, a primary reason for Renee and Teddy's removal from Omar's care was his substance abuse and, more specifically, the impact it had on the juveniles. Omar had previously lost custody of Renee and Teddy in 2014 due to substance abuse issues, but he regained custody once the trial court was satisfied Omar had addressed his drug problem. Omar's relapse at some point between 2014 and 2016 is largely what led to this case being initiated. Although the record does show Omar made progress towards recovery by completing substance abuse treatment in September 2017, it is clear that he failed to take requested drug screens on 10 January, 2 February, and 19 February 2018. DSS offered Omar transportation services after he claimed transportation problems caused him to miss drug screens, but Omar declined. Omar's refusal supports the reasonable inference that the alleged transportation problems were an excuse for avoiding drug screens.

In addition to substance abuse issues, the trial court's conclusion that Renee and Teddy are neglected juveniles was based in part on Omar's inability to secure stable housing and employment. Our Supreme Court has held:

> Where the evidence shows that a parent has failed or is unable to adequately provide for his child's physical and economic needs, whether it be by reason of mental infirmity or by reason of willful conduct on the part of the parent, and it appears that the parent will not or is not able to correct those inadequate conditions within a reasonable

> time, the court may appropriately conclude that the child is neglected.

*In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984). Here, the unchallenged findings of fact show that Omar failed to adequately provide for his children's physical and economic needs. Although, Omar was incarcerated at the time of the termination hearing, he "ha[d] no plans in place for income or housing upon his release."

Despite Omar's progress in some aspects of his case plan, the trial court's findings regarding his substance abuse establish both prior neglect and a probability the neglect would reoccur if the juveniles were returned to Omar's custody. Additionally, Omar's apparent inability to provide for his children's physical and economic needs, without evidence that he could correct those inadequacies within a reasonable time, provides independent support of the trial court's conclusion regarding neglect. We hold the trial court did not err in concluding grounds exist to terminate Omar's parental rights on the basis of neglect.

It is well established that a single ground is sufficient to support an order terminating parental rights. *See In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006). We therefore need not address Omar's challenge to the ground of dependency also found by the trial court. Omar does not challenge the trial court's conclusion that termination of his parental rights is in the best interest of Renee and

Teddy, and we affirm the trial court's order terminating his parental rights to the juveniles.

## CONCLUSION

The trial court's conclusion that Renee and Teddy are neglected juveniles is supported by clear and convincing evidence, and that conclusion of law supports the trial court's decision to terminate Omar's parental rights to the juveniles.

AFFIRMED.

Chief Judge MCGEE and Judge COLLINS concur.

Report per Rule 30(e).