

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1105

Filed: 21 January 2020

Alleghany County, No. 16 JT 15

IN THE MATTER OF: ZSB, A MINOR JUVENILE.

Appeal by respondent from order entered 3 August 2018 by Judge Robert J. Crumpton in District Court, Alleghany County. Heard in the Court of Appeals 19 December 2019.

Anné C. Wright and John Benjamin “Jak” Reeves, for petitioner-appellee Alleghany County Department of Social Services.

Robert W. Ewing, for respondent-appellant.

Q Byrd Law, by Quintin D. Byrd, for guardian ad litem.

STROUD, Judge.

Respondent appeals from the trial court’s order terminating her parental rights to her child based on several grounds for termination. Because the trial court failed to make sufficient findings of fact to support any ground for termination of parental rights, we vacate and remand for entry of a new order including adequate findings of fact and conclusions of law.

I. Background

On 15 September 2016 Alleghany County Department of Social Services (“DSS”) filed a petition alleging Zoe¹ was abused and neglected. DSS had received a report on 14 September 2016 alleging Zoe was exposed to an injurious environment, improper supervision, and respondent’s substance abuse. During the social worker’s initial contact at respondent’s home on 15 September 2016, Zoe, who was almost seven years old at the time, reported that respondent used drugs and had drugs and paraphernalia hidden around the house, respondent “acts crazy, passes out, and falls over, and will not wake up for 2 hours[,]” respondent “will not fix her food to eat” so she eats directly from the can, and she is afraid of her mother because she will “leave a handprint on her.” Respondent told the social worker that she would not cooperate with DSS and would move to avoid involvement with DSS.

On 9 December 2016, after a hearing, the court adjudicated Zoe to be an abused and neglected juvenile with a permanent plan of foster placement or kinship placement. On 15 August 2017, the court entered a permanency planning order changing Zoe’s permanent plan to adoption and ordering DSS to cease reunification efforts. On 17 October 2017, DSS filed a petition to terminate respondent’s parental rights to Zoe. Following a hearing that respondent did not attend, the trial court entered an order on 3 August 2018 terminating respondent’s parental rights to Zoe

¹ A pseudonym is used.

on the grounds of abuse and neglect, failure to make reasonable progress, failure to pay a portion of the cost of care, dependency, and abandonment. Respondent appeals.

II. Termination of Parental Rights

Proceedings to terminate parental rights occur in two phases: (1) the adjudication phase, and (2) the disposition phase. In the adjudication phase, findings made by the trial court must be supported by clear, cogent, and convincing evidence, and the findings must support a conclusion that at least one statutory ground for the termination of parental rights exists. A trial court is only required to find one statutory ground for termination before proceeding to the disposition phase. In the disposition phase, the trial court must determine whether termination of parental rights is in the best interests of the child.

In re J.A.P., 189 N.C. App. 683, 687–88, 659 S.E.2d 14, 18 (2008) (citations omitted).

Respondent challenges only one of the trial court's findings of fact regarding her employment status as unsupported by the evidence. Therefore, all other findings of fact are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Instead, respondent contends the trial court did not make sufficient findings of fact to support any of its conclusions of law.

The order on appeal based most of its findings on quotes from prior orders and did not link any of the general findings to a specific ground for termination. The order is difficult to understand because the findings from the various orders entered at different times are stating the circumstances existing as of those times in 2016 and 2017 and only a few of the findings were based on the time of the hearing on

termination of parental rights. Respondent did not appear at the hearing, and had not had contact with DSS since the summer of 2017.² According to the evidence, respondent had not complied with her plan, visited Zoe, or had any contact with her in “almost eighteen months” at the time of the hearing, and yet the trial court failed to make findings of fact regarding this evidence.

We have carefully considered the findings of fact and managed to determine the relevant time periods for each, based upon the dates of the hearing and orders upon which they were taken. But since nearly all of the relevant substantive factual findings in the order were taken from prior hearings, there are simply no findings addressing the circumstances since those prior orders, the time of the filing of petition for termination of parental rights, or the time of the hearing on termination of parental rights. DSS presented evidence which could support termination of respondent’s parental rights on one or more of the alleged grounds, but the trial court failed to make sufficient findings of fact on that evidence. It appears that respondent had essentially disappeared from Zoe’s life and failed to cooperate with DSS for a long time. But this Court cannot make findings of fact, as the trial court is the sole judge of the weight and credibility of the evidence. *See In re D.A.H.--C.*, 227 N.C. App. 489, 500, 742 S.E.2d 836, 844 (2013) (“[T]he trial court is ultimately responsible for evaluating the weight and credibility to be given to the evidence.”). We therefore

² While the case worker testified that the last contact with DSS was actually 20 August 2017 because respondent called once that day, the evidence indicates that respondent did not attempt to contact Zoe.

IN RE: Z.S.B.

Opinion of the Court

vacate the order and remand for the trial court to make the appropriate findings of fact and conclusions of law. On remand, the trial court may in its discretion receive additional evidence prior to entering a new order or may enter its order based upon the existing record.

III. Conclusion

For the foregoing reasons, we vacate and remand for entry of a new order.

VACATED AND REMANDED.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).