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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-507

No. COA21-189

Filed 21 September 2021

Robeson County, 19 JA 308

IN THE MATTER OF: J.H., IV

Appeal by Respondent from orders entered 20 November 2020 by Judge Angelica C. McIntyre in Robeson County District Court. Heard in the Court of Appeals 7 September 2021.

David A. Perez for Respondent-Appellant Father.

J. Edward Yeager, Jr., for Robeson County Department of Social Services.

Matthew D. Wunsche for guardian ad litem.

DILLON, Judge.

¶ 1 Respondent-Appellant ("Father") appeals from adjudication and disposition orders entered 20 November 2020.

I. Background

¶ 2 Mother and Father were parents to infant J.B., who was brought into the emergency room unresponsive in July 2019. J.B. had bruising on her face and finger

marks on her arms and legs. J.B. was pronounced dead shortly after she was taken to the hospital and Mother and Father were charged with J.B.'s murder. At the time of her arrest, Mother was pregnant with J.B.'s sibling "James."[1]

¶ 3 In September 2019, two months after J.B.'s death, Mother gave birth to James while in pre-trial custody. Three days after James was born, Robeson County Department of Social Services ("DSS") filed a juvenile petition alleging that James was neglected and dependent because he lived in an injurious environment.

¶ 4 On 17 September 2020, the trial court held an adjudicatory hearing where two social workers testified. DSS did not present a death certificate or autopsy for James' sibling J.B., but presented evidence that Father was not allowed to be around J.B. unsupervised and that the parents had a history of domestic violence.

¶ 5 The trial court adjudicated James to be a neglected and dependent juvenile. At disposition, the trial court terminated reunification efforts with both parents "due to both parents being incarcerated and charged with murder of another minor child." Father appealed from the Adjudication Order and Disposition Order.

II. Analysis

¶ 6 Father makes several arguments on appeal. To the extent Father has not

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b)(1).

properly appealed, in our discretion, we grant Father's petition for writ of *certiorari* in order to address his arguments.

A. Neglect Adjudication

¶ 7 Father argues that the trial court erred in adjudicating James to be a neglected juvenile. We disagree.

¶ 8 "The role of this Court in reviewing a trial court's adjudication of neglect . . . is to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact[.]" *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (internal citation and quotation marks omitted).

¶ 9 "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019). Unchallenged findings are considered binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). We review the trial court's conclusions of law *de novo*. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 10 Our General Statutes define a neglected juvenile as:

> Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; 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[.] In determining whether a juvenile is a neglected juvenile, *it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect* or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2020) (emphasis added).

¶ 11 Our Supreme Court has stated that after considering the evidence that another juvenile in the home has died as a result of suspected abuse or neglect, "the court may find the neglect ground if it concludes the evidence demonstrates a likelihood of future neglect by the parent." *In re A.W.*, 377 N.C. 238, 255, 856 S.E.2d 841, 854 (2021) (internal quotation marks omitted). Our Court has concluded the same in cases where a child is born into a home where a prior child has died of non-accidental injuries. *See, e.g.*, *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

¶ 12 For example, in *In re A.W.*, social services took custody of an infant girl after her birth because her sibling had been injured and died while in her parents' care. *In re A.W.*, 377 N.C. at 255, 856 S.E.2d at 854. The trial court relied on the death of the sibling, the parents' concealment of the facts surrounding the sibling's death, and the mother's continued relationship with the father to adjudicate the infant girl neglected following her birth. *Id*. at 255, 856 S.E.2d at 854. Our Supreme Court affirmed the trial court's decision. *Id*. at 257, 856 S.E.2d at 855.

¶ 13 Father does not argue that any particular findings of the trial court are

unsupported by the evidence. Therefore, we consider whether the findings, binding on appeal, support the trial court's conclusion that James is a neglected juvenile. Here, the trial court found as fact that: (1) James' parents were currently incarcerated, (2) "a child was injured in [Mother's] home by [Father] who was not supposed to be around the minor child unsupervised," (3) "the minor child sustained injuries and [Mother] did not call 911 nor try to resuscitate the minor child because she panicked," and (4) "both parents . . . [had been] charged with murder in regards to the death of another child." Based on these findings, the trial court concluded that James was a neglected child based on an injurious environment.

¶ 14 N.C. Gen. Stat. § 7B-101(15) and our caselaw allow a trial court to rely on evidence of neglect resulting in death of other children. Contrary to Father's assertion, an actual murder conviction is not required by the statute. *See* N.C. Gen. Stat. § 7B-101(15) (allowing consideration of evidence that "another juvenile has died as a result of *suspected* abuse or neglect") (emphasis added)). The trial court relied on evidence that James' sibling, J.B., had died from injuries inflicted in the parents' home and forecasted the risk such an environment might pose to a newborn, as it was permitted to do. We conclude that the trial court's uncontested findings support its conclusions in adjudicating James as a neglected juvenile.

B. Cessation of Reunification Efforts

¶ 15 Father also argues that the trial court erred in ceasing reunification efforts

with Father in its disposition order by relying, at least in part, on the fact that he has been "charged" with the murder of J.B. We agree.

¶ 16 "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007). Abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

¶ 17 N.C. Gen. Stat. § 7B-901(c) directs that in certain instances, a regular plan to reunite a juvenile with their parent is not required:

> (c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in [N.C. Gen. Stat. §] 7B-901 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:
>
> > (1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:

. . .

> (f) *Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.*

. . .

> (3*) A court of competent jurisdiction determines or has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent;* (ii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required or register as a sex offender on any government-administered registry.

N.C. Gen. Stat. § 7B-901(c) (emphasis added).

¶ 18 In 2016, our Court considered what the trial court must find to satisfy the statute. *In re G.T.*, 250 N.C. App. 50, 57, 791 S.E.2d 274, 279 (2016). At that time, N.C. Gen. Stat. § 7B-901(c) required that the trial court find that "[a] court of competent jurisdiction *has* determined" a fact without the additional language "determines." *See* N.C. Gen. Stat. § 7B-901(c) (2016) (emphasis added). While our opinion largely focused on the verb tense of the statute at the time, we noted that in order to cease reunification efforts, the trial court was required to make an ultimate finding of fact tracking the language of N.C. Gen. Stat. § 7B-901(c) at issue. *In re*

G.T., 250 N.C. App. at 58, 791 S.E.2d at 279.

¶ 19 DSS and the guardian *ad litem* argue that the trial court's Finding of Fact #8 captures the substance of subsection (c)(3). In the alternative, they argue that the trial court's findings capture subsection (c)(1)(f).

¶ 20 The trial court's findings in this case were not sufficient to satisfy either portion of the statute. Specifically, the trial court found that "Reunification efforts should cease . . . due to both parents being incarcerated *and charged with* murder of another minor child." (Emphasis added.)

¶ 21 The trial court failed to make any finding at disposition that a court of competent jurisdiction determines or has determined that (1) the parent *has committed* murder or voluntary manslaughter of another child by the parent, has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; or (2) aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect. *See* N.C. Gen. Stat. § 7B-901(c)(1), (3). The only finding made was that Father has been "charged" with the murder of J.B. Therefore, we vacate the portion of the disposition order ceasing reunification efforts with Father.

III. Conclusion

¶ 22 We affirm the trial court's adjudication of James as a neglected juvenile and vacate the portion of the Disposition Order ceasing reunification efforts with Father and remand for further proceedings consistent with this opinion. On remand, the trial court may reconsider the disposition. The trial court may take further evidence, which may include evidence that would support a finding that Father committed acts which would constitute the elements of a murder or manslaughter of J.B.

AFFIRMED IN PART; VACATED IN PART; REMANDED.

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).