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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-570

No. COA22-139

Filed 16 August 2022

Wake County, No. 20 JT 45

IN THE MATTER OF: E.L.G., Jr.

Appeal by Respondent-Father from an order entered 29 November 2021 by Judge Lori Christian in Wake County District Court. Heard in the Court of Appeals 12 July 2022.

*Wake County Attorney's Office, by Mary Boyce Wells, for Petitioner-Appellee Wake County Health and Human Services.*

*GAL Appellate Counsel Matthew D. Wunsche for Appellee Guardian* ad Litem.

*Garron T. Michael for Appellant-Respondent Father.*

INMAN, Judge.

¶ 1 Respondent Father ("Father") appeals from an order terminating his parental rights to his son, E.L.G., Jr. ("Edward").[1] On appeal, Father asserts that the trial court erred in terminating his parental rights for the likelihood of future neglect under N.C. Gen. Stat. § 7B-1111(a)(1) and an inability to provide proper care and supervision under N.C. Gen. Stat. § 7B-1111(a)(6). After careful review, we affirm

[1] We use a pseudonym for ease of reading and to protect the identity of the juvenile.

the trial court's order.

## I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 Edward was born on 4 March 2020 to an incarcerated mother who did not identify his father. On 6 March 2020, Petitioner-Appellee Wake County Health and Human Services ("WCHHS") filed a juvenile petition alleging that Edward was neglected and dependent because of his mother's history of substance abuse, incarceration, and inability to arrange for appropriate alternative care. WCHHS placed Edward in foster care after filing a petition for nonsecure custody.

¶ 3 Two weeks after Edward's birth, Father's paternity of Edward was established. Father also has a history of substance abuse and has accrued several convictions for drug offenses. At the time of Edward's birth, Father was also incarcerated and was not scheduled for release until August 2023.

¶ 4 On 20 March 2020, after an initial hearing on nonsecure custody, the trial court determined that Edward should remain with his foster family and his parents should not have visitation rights since they were both incarcerated.

¶ 5 On 5 June 2020, both of Edward's parents signed, and the trial court entered, a consent order adjudicating Edward as neglected and dependent, continuing his placement in foster care, and directing Father to contact a social worker and enter into an Out of Home Family Services Agreement.

¶ 6 On 31 August 2020, the trial court entered a juvenile order noting that Father was participating in the services offered at his facility, including a 90-day substance abuse program, "Thinking for a Change," a cognitive behavioral intervention-based class, and AA/NA meetings. The trial court ordered Father to comply with the Out of Home Family Services Agreement, which required him to obtain suitable housing and stable employment, participate in all services available to him at the facility where he was incarcerated, demonstrate the skills he learned through his services during his interactions with his son, and maintain regular contact with the WCHHS social worker. The trial court further determined that the "best primary permanent plan" was reunification and the "best secondary permanent plan" was adoption.

¶ 7 On 8 April 2021, following a permanency planning hearing, the trial court entered an order changing the primary plan from reunification to adoption. The trial court found that Father was cooperating with WCHHS and participating in the services available at his facility. However, the trial court also found that Father remained incarcerated and the family members he suggested as alternative placement options "were no longer interested in providing care for [Edward]."

¶ 8 After receiving this order, Father wrote a letter to the trial court expressing his confusion about the change to a primary plan of adoption and suggesting an additional alternative family placement for Edward.

¶ 9 Following Father's letter and another hearing, the trial court issued an order on 1 September 2021 directing WCHHS to investigate the potential family placement. WCHHS followed up with the family member identified by Father, but the family member declined to serve as permanent care giver for Edward.

¶ 10 On 4 October 2021, the trial court entered another permanency planning order, finding it was not in the best interest of Edward to be placed with any of the family members listed by Father. The trial court also noted Edward's mother had relinquished her parental rights, Father was still incarcerated, but continued to cooperate with WCHHS. The trial court maintained a primary plan of adoption.

¶ 11 On 27 May 2021, WCHHS filed a motion for termination of Father's parental rights. WCHHS alleged that Edward was a dependent and neglected juvenile, that Father's incarceration resulted in the neglect of Edward, and that the circumstances of Father's history of incarceration and substance abuse created a likelihood of future neglect by Father. WCHHS further alleged that Father was unable to name an appropriate alternative placement for Edward.

¶ 12 In September 2021, Father named his cousin, C.T. ("Ms. T"), as another alternative placement for Edward. WCHHS conducted a home study and found that Ms. T's home was physically appropriate. However, Ms. T had no relationship with Father or Edward, and Ms. T had a criminal record that could prevent her from being approved to adopt Edward.

¶ 13 At the termination hearing held on 7 and 8 October 2021, Father testified that he had never met Ms. T. He acknowledged his lengthy criminal history and status as an habitual felon, serving at least fifteen years in prison, conceiving Edward as part of a "fling" with the mother shortly before his current term of incarceration, and using marijuana and cocaine with the mother. He testified that he worked for the "National Forestry Service [sic]" as part of a work program and that he participated in life skills training, a cognitive behavior program, and other educational programs offered in prison. He also testified about his personal life outside prison:

(1) Father had another child, J.D. ("Jenny"), 27 years earlier, and Jenny's mother asked Father not to be involved in Jenny's life because of his "legal issues" and immaturity;

(2) Father was drug free for a period three years, which ended when he met Edward's mother;

(3) Father had constant contact with law enforcement from 1989 to present, with three years being the longest period he spent outside prison during that span;

(4) Father stayed at the Raleigh Rescue Mission for six months in 2016 and was able to get sober for a time;

(5) Father then worked at a lumber mill and housed his adult daughter Jenny and her son at an apartment for a year because Jenny was in "legal trouble[;]"

(6) Jenny no longer lived with Father after a detective arrived at the apartment with a warrant for Jenny's arrest;

(7) Father moved into a new apartment and met Edward's mother roughly three to four months later;

(8) Father began using drugs again and was incarcerated eleven months after meeting Edward's mother.

¶ 14 On 29 November 2021, the trial court entered an order terminating Father's parental rights. The trial court concluded that Father had neglected Edward and "[t]here [was] a high probability and likelihood of a repetition of neglect" because it believed Father would "re-engage in criminal activity, [would] not remain free of illegal and impairing substances, and [would] return to prison after he is released." The trial court also found Ms. T was not an appropriate caregiver for Edward because she did not have a relationship with Father or Edward and she had a criminal record. The trial court ultimately determined it was in Edward's best interest to terminate Father's parental rights. Father appeals.

## II. ANALYSIS

¶ 15 Father argues that the trial court erred in terminating his parental rights for neglect under Subsection 7B-1111(a)(1) and dependency under Subsection 7B-1111(a)(6). Specifically, he contends that several of the findings on which those grounds were based are unsupported by the evidence. We disagree and affirm the trial court's order.

### A. Standard of Review

¶ 16 "When reviewing the trial court's adjudication of a ground for termination [of parental rights], [this Court should] examine whether its findings of fact are supported by clear, cogent, and convincing evidence and whether those findings in turn support the trial court's conclusions of law." *In re J.B.*, 379 N.C. 233, 2021-NCSC-135, ¶ 6. "Unchallenged findings are deemed supported by competent evidence and are binding on appeal." *Id.* (citation and quotation marks omitted). We need only review "those findings necessary to support the trial court's conclusion that a ground existed to terminate parental rights." *In re M.E.S.*, 379 N.C. 275, 2021-NCSC-140, ¶9. "The trial court's conclusions of law are reviewed de novo." *In re J.B.*, ¶ 6.

### B. The Evidence and Findings Support a Determination of Dependency.

¶ 17 In order to terminate parental rights on the basis of dependency, the trial court must determine from clear and convincing evidence:

> [t]hat the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile

> is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6) (2021). Thus, "the trial court must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

¶ 18 On appeal, Father does not challenge his unavailability due to his continued incarceration, and instead argues only that there is insufficient evidence to support the trial court's finding that there are no suitable alternative child care arrangements for Edward. Father specifically challenges the following pertinent findings of fact as unsupported by the evidence insofar as they involve Ms. T as a possible alternative caretaker:

> 33. [Ms. T] is a cousin of the father. She was named by the father as a possible caregiver in September 2021, four months after the Motion for Termination of Parental Rights was filed, and over 18 months after the child's birth and subsequent entry into care. [Ms. T] has met the father no more than one time in her entire life, and did not know of the child's existence until September 2021. She has no relationship with the father and has never met the child. WCHHS began an assessment of her home, in which she

> runs a home child care center. Her home was physically appropriate, however, she has a criminal history that WCHHS believes will make it unlikely that she would pass an adoption home study. [Ms. T] is not an appropriate caregiver for the child.
>
> 35. [WCHHS] acted appropriately in investigating and assessing the father's relatives. The agency did what the agency was supposed to do regarding each of the named relatives. WCHHS did nothing to thwart any of the named relatives from being considered for placement of the child. It is the biological relatives who did not follow through.
>
> 36. It remains contrary to the child's best interests to be placed with a biological relative and the father lacks an appropriate alternative child care arrangement.

¶ 19 Father challenges Finding of Fact 33 only to the extent that it deems Ms. T "not an appropriate caregiver for [Edward]." However, this finding is supported by the remaining unchallenged portion of Finding of Fact 33 and other evidence. Specifically, Ms. T had admitted to several prior assault charges on her record, and a WCHHS social worker also testified that these assault charges, coupled with "many driving infractions," led them to believe it "doubtful that [Ms. T.] would pass backgrounds checks and adoption." While Father is correct that the evidence shows Ms. T operates a licensed child care business out of her home, she testified that that she would not presently be able to extend that care to Edward if he was adopted:

> I did inform the social worker since I'm a family home childcare my ratio is a lot less than an actual center. It's one to eight. I can only have eight kids at one time and currently God has blessed me to where I do have those eight. So I am looking forward to expand[ing] so that way

> [Edward] can have care here because the only way that I would be able to have him here first [is] if I was to take a child out and I wouldn't want to do that.

In short, though Father points to other evidence in the record that would support a contrary finding that Ms. T would be an appropriate caregiver, this is not a basis for us to disturb the trial court's resolution of the conflicts in the evidence as the finder of fact. *See, e.g.*, *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003) ("If there is competent evidence, the findings of the trial court are binding on appeal. Such findings are moreover conclusive on appeal even though the evidence might support a finding to the contrary." (citations omitted)).

¶ 20 Father's remaining challenges to Findings of Fact 35 and 36 are all premised on his assertion that Finding of Fact 33 is unsupported by the evidence. Because we hold that finding is adequately supported by the record—conflicts in the evidence notwithstanding—we hold Findings of Fact 35 and 36 are likewise supported. We therefore disagree with Father that the trial court erred in determining Father lacked appropriate alternative childcare arrangements and adjudicating Edward dependent under Subsection 7B-1111(a)(6).

¶ 21 Having determined the trial court appropriately terminated Father's parental rights on this ground, we need not address the remaining basis of neglect. *In re J.A.M.*, 375 N.C. 325, 334 n.5, 847 S.E.2d 763, 770 n.5 (2020).

## III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the trial court's order terminating Father's parental rights on the basis of dependency pursuant to Subsection 7B-1111(a)(6).

AFFIRMED.

Judges TYSON and GORE concur.

Report per Rule 30(e).