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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-352

Filed 21 February 2023

New Hanover County, Nos. 16JT358 16JT359 20JT96

IN THE MATTER OF: E.P., C.P., & J.P., IV

Appeal by respondent-father and respondent-mother from orders entered 24 January 2022 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 11 January 2023.

*Jane R. Thompson for petitioner-appellee New Hanover County Department of Social Services.*

*Quintin D. Byrd for Guardian ad Litem.*

*Mary McCullers Reece for respondent-appellant mother.*

*Jason R. Page for respondent-appellant father.*

DILLON, Judge.

Respondent-parents (“Parents”) are the mother (“Mother”) and father (“Father”) of minor children E.P. (“Edna”)<sup>1</sup>, C.P. (“Chris”), and J.P., IV (“Jacob”). Parents appeal from the trial court’s order terminating their parental rights to the

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<sup>1</sup> Pseudonyms are used to protect the juveniles’ identities and for ease of reading.

children. Mother has filed a no-merit brief. Father has filed a brief contending the trial court erred by (1) violating his due process rights, (2) failing to support several findings of fact with clear and convincing evidence, (3) concluding his rights should be terminated based on grounds of neglect, and (4) concluding he willfully left the children in foster care or placement outside the home for 12 months without showing reasonable progress under the circumstances. We affirm.

### I. Background

In 2012, the New Hanover County Department of Social Services (“DSS”) became involved with the family due to Parent’s substance abuse issues shortly after Edna’s birth. In December 2016, Edna and Jacob were the subjects of a juvenile court petition based on Parent’s substance abuse issues. By August 2017, there was a trial placement of both children. However, within a month, Parents regained custody of the children. In October 2019, when Chris was two months old, DSS renewed its in-home services to the family.

On 29 May 2020, DSS filed juvenile petitions alleging the children to be neglected juveniles, and the children entered DSS nonsecure custody. At this time, Edna was eight years old, Jacob was three years old, and Chris was nine months old. Parents were not present for the July 2020 continued nonsecure custody and adjudication hearings (“July Hearings”). Although Father had been released from incarceration on 7 May 2020, his whereabouts were unknown at the time of the July Hearings. Mother had no stable housing or employment, had inconsistent contact

with her treatment providers, and had not complied with drug screens. The grim condition of the children during this time was as follows: Chris was behind on immunizations; Jacob was developmentally delayed, needed extensive dental surgery, and exhibited aggressive behavior; Edna had developmental and academic delays, had been diagnosed with ADHD, and had not completed any of her assignments during the COVID-19 school year; and both Edna and Jacob were being evaluated for PTSD.

At the disposition, Parents were ordered to (1) obtain a psychological evaluation and follow any treatment recommendations, (2) complete an updated Comprehensive Clinical Assessment (“CCA”) and follow all treatment recommendations, (3) refrain from any non-prescribed substances, (4) submit to random drug screens, (5) engage in a parenting education program, (6) refrain from physical punishment, and (7) maintain a living environment that met minimal standards. Parents were each given two hours of visitation per week.

On 5 October 2020, a review hearing was held, and Parents were once again absent. On 12 September 2020, Father returned to prison as an absconder, and failed to comply with recommended services. Mother’s whereabouts were unknown. She had not been in contact with DSS, did not complete paperwork for her September appointment, and could not control the children’s behavior at the one visit she attended in July 2020. The trial court continued the same plan requirements mentioned above. At the time of the review hearing, the condition of the children was

as follows: Chris was progressing in the foster home, could sit up and walk at 13 months, and was current on immunizations; Jacob was in a behavioral program and his dental surgery had been delayed by COVID-19; Edna was involuntarily hospitalized for two weeks due to serious behavioral issues, was placed in a therapeutic foster home, and remained behind in academics. However, she had a support plan in place to help her progress.

On 10 June 2021, a permanency planning hearing was held in which the trial court ordered a permanent plan of adoption with a concurrent plan of reunification. Father was present via WebEx from the prison before he walked out and did not return. His release date of June 2021 was delayed until January 2022 due to multiple prison infractions. Prior to his incarceration, Father did not have employment or adequate housing, contacted DSS once, and had not visited his children. Additionally, Mother did not attend the hearing.

In February 2021, Mother completed her CCA five months after it was ordered. Her therapist found she did “not appear to possess the functional capacity to make good decisions and demonstrate good judgment relative to herself and her children’s safety.” Mother did not comply with treatment recommendations, and she shared the location of the domestic violence shelter with her abusive boyfriend when she was there. She submitted only 5 of 16 required drug screens. On the drug screens she did submit, she tested positive for unprescribed drugs. On her February 2021 test, she tested positive for methamphetamine. She missed 14 out of 21 visits with her

children, including 7 in a row. At the last visit, a baggie appearing to contain methamphetamine fell out of her bra in front of the children, and she fled the building after security was called. She reported various temporary jobs without income verification, and she was living with friends in housing not suitable for children.

On 2 September 2021, DSS filed a petition to terminate the parental rights of Parents, alleging neglect and failure to make reasonable progress. DSS stated the additional ground of abandonment against Father. In orders entered 24 January 2022, the trial court terminated the parental rights of Parents on the neglect and failure to make reasonable progress. Parents timely appealed.

## II. Analysis

As Mother has filed a no-merit brief, in our discretion, we do not address any arguments except those raised by Father.

### A. Due Process Rights

Father first argues that his due process rights were violated, and as a result, the order terminating his parental rights should be dismissed. We disagree.

“[A] parent enjoys a fundamental right ‘to make decisions concerning the care, custody, and control’ of his or her children under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *Adams v. Tessener*, 354 N.C. 57, 60, 550 S.E.2d 499, 501 (2001) (quoting *Troxel v. Granville*, 530 U.S. 57, 66, (2000)). Accordingly, “[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *In re Murphy*, 105

N.C. App. 651, 653, 414 S.E.2d 396, 397 (1992). To provide fundamentally fair procedures at an adjudicatory hearing, a respondent-parent must be afforded *an adequate opportunity to present evidence* “enabl[ing] the trial court to make an independent determination” regarding the facts pertinent to the termination motion. *In re C.A.B.*, 381 N.C. 105, 112, 871 S.E.2d 468, 474 (2022).

In the instant case, the trial court afforded Father an adequate opportunity to present evidence. Although Father was not present at the hearing, his counsel was present, and he was timely served a copy of the order on 28 August 2020. Father had 30 days to appeal and failed to do so. N.C. Gen. Stat. § 7B-1001(b) (2022). In addition, Father waived the right to appeal by not objecting at trial, because constitutional arguments may not be raised for the first time on appeal. *See In re J.N.*, 381 N.C. 131, 133, 871 S.E.2d 495, 497 (2022). Father had the opportunity to object because he was present during the 10 June 2021 hearing; however, he failed to do so. Furthermore, the State’s interest in protecting the children outweighs Parents’ rights because Mother stipulated to the facts supporting the neglect at the adjudication hearing. *See In re Poole*, 151 N.C. App. 472, 477, 568 S.E.2d 200, 203 (2002).

Accordingly, we conclude Father’s due process rights were adequately protected.

#### A. Challenged Findings of Fact

Father next argues that findings of fact 14, 21, 22, 25, and 26 are not supported by clear and convincing evidence. We disagree.

Findings of fact supported by competent evidence are binding on appeal despite evidence in the record that may support a contrary finding. *In re Montgomery*, 311 N.C. 101, 112-113, 316 S.E.2d 246, 254 (1984). The resulting findings of fact must be “*sufficiently specific*” to allow an appellate court to “review the decision and test the correctness of the judgment.” *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982) (emphasis added).

In the instant case, the findings of fact are sufficiently specific. First, in finding of fact 14, the evidence supports the trial court’s finding that the social worker continued to work with the family. Additionally, even though finding of fact 21 does not properly state the dates, it does not affect the validity of the order as the correct dates are in finding of fact 23. Furthermore, finding of fact 22 is validated by witness testimony of Father’s refusal to see the social worker when she visited him in jail. Finding of fact 25 simply restates what the trial court had already found, and there is no evidence to the contrary. Lastly, Father admitted to his lack of contact with his children in accordance with finding of fact 26.

We have carefully reviewed the findings and the evidence and conclude these findings are supported by clear and convincing evidence.

#### B. Grounds of Neglect

Father also argues that the trial court erred by terminating his rights based on the grounds of neglect. We disagree.

If a parent fails to correct the conditions that led to an earlier finding of neglect,

this constitutes a failure to provide “proper care, supervision, or discipline” under N.C. Gen. Stat. § 7B-101(15). *In re Davis*, 116 N.C. App. 409, 414, 448 S.E.2d 303, 306 (1994).

In the instant case, because there was a prior adjudication of neglect, Father was required to correct the conditions that led to this finding. Instead of correcting these conditions, he perpetuated the neglect by having almost no contact with DSS or his children, absconding from probation leading to his re-incarceration, and having multiple prison infractions.

This Court has found that failure to contact DSS or one’s children while incarcerated is evidence of willfulness. *In re Harris*, 87 N.C. App. 179, 184, 360 S.E.2d 485, 488 (1987).

By failing to contact his children and DSS, Father willfully did not improve the circumstances that led to his initial removal from his children’s lives. *See In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995).

Accordingly, we conclude the trial court did not err in terminating Father’s parental rights on the ground of neglect.

#### C. Conclusion of the Trial Court

Lastly, Father argues that the trial court erred in concluding that he willfully left the children in foster care or placement outside the home for 12 months without showing reasonable progress under the circumstances. We disagree.

Parental rights may be terminated if the “parent has willfully left the juvenile



in foster care or placement outside the home for more than 12 months without showing *to the satisfaction of the court* that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(2) (2022) (emphasis added).

In the instant case, Father abandoned his children in 2020 and had only written one letter to one child by the time the termination of parental rights petition was filed in 2021. As a result, he failed to make reasonable adjustments to improve his past neglect to the satisfaction of the court.

Accordingly, the trial court properly concluded that Father’s parental rights should be terminated due to his failure to make reasonable progress.

### III. Conclusion

We affirm the trial court’s order terminating Parent’s parental rights.

AFFIRMED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).