

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-532

Filed 21 March 2023

Durham County, Nos. 20 JT 47, 20 JT 48, 20 JT 49, 20 JT 50

IN THE MATTER OF: T.M.P., Jr., M.D.-A.P., M.S.-A.P., T.M.P.

Appeal by Respondent-Father from Order entered 2 February 2022 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 22 February 2023.

Lauren Vaughn for petitioner-appellee Durham County Department of Social Services.

Matthew D. Wunshe for Guardian ad Litem.

Garron T. Michael for respondent-appellant father.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Father appeals from an Order terminating his parental rights as to the minor children. Relevant to this appeal, the Record on Appeal tends to reflect the following:

On 23 March 2020, Durham County Department of Social Services (DSS) filed

Opinion of the Court

a Juvenile Petition alleging the minor children were abused, neglected, and dependent juveniles. The allegations of abuse, neglect, and dependency in the Juvenile Petition arose primarily from factual allegations the children had been removed from their home after Respondent-Father had beaten the children's mother to death on 15 March 2020 and was then currently held in custody on charges of murder. On 3 September 2020, the trial court entered an Order adjudicating the minor children to be abused neglected and dependent juveniles.

On 14 January 2021, DSS filed a Motion for Termination of Parental Rights. The Motion alleged multiple grounds for termination of Respondent-Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a) including: neglect or abuse; abandonment of the children for six months immediately preceding the filing of the Motion; the commission of murder or voluntary manslaughter of the other parent of the children; and dependency.

The Motion for Termination of Parental Rights came on for hearing on 16 November 2021. At the outset of the hearing, DSS requested the trial court take judicial notice of the Orders in the underlying abuse, neglect, and dependency adjudication. Respondent-Father did not object to the trial court taking judicial notice of the underlying files.¹ Respondent-Father presented no evidence at adjudication. At the conclusion of the adjudicatory hearing, the trial court rendered

¹ Respondent-Father, through counsel, did specifically object to the trial court taking judicial notice of the related criminal files.

Opinion of the Court

its adjudication, determining grounds existed to terminate Respondent-Father's parental rights on each of the grounds alleged by DSS in its Motion. Following the adjudicatory hearing, the trial court proceeded to the disposition phase, ultimately determining it was in the best interests of the minor children to terminate Respondent-Father's parental rights.

The trial court entered its written Order Terminating Parental Rights on 2 February 2022. In Finding of Fact 17 of this Order, referencing its earlier 3 September 2020 Order, the trial court found the children had previously been adjudicated as abused, neglected, and dependent juveniles based on its prior findings including:

c. On or about March 15, 2020, [DSS] received a child protective service report regarding [the] above-named children indicating that Durham Police Department responded to the family home on March 15, 2020, and the Mother was deceased and [Respondent-Father] was taken into custody and that the children witnessed the Mother's murder.

d. On or about March 13, 2020, [Respondent-Father] was in the home with the mother and the children. . . . He reported that when he awoke, he saw legs running past him and that when he confronted the mother, she was nude. According to [Respondent-Father], the mother admitted to cheating on him. [Respondent-Father] admitted that he began beating the mother on that date.

e. Approximately between March 13, 2020 and March 15, 2020, [Respondent-Father] killed the mother by beating her to death with a broken wooden broom handle. While he was beating the mother to death, [Respondent-Father] made the above-named children come into the room so they could see him hitting mother on multiple occasions. . . . [Respondent-Father] also encouraged the children . . . to hit the mother with sticks or other

Opinion of the Court

instruments. . . .

f. The beating of the Mother by [Respondent-Father] lasted overnight and[/]or multiple days, and even when the children were not in the room, they could hear [Respondent-Father] beating their mother. [One child] described hearing his mother saying “please, please stop” and his mother yelling, which resulted in [Respondent-Father] hitting the mother harder.

. . . .

h. On 15 March 2020, following the killing of the mother, [Respondent-Father] took the children to the Durham Police Department, where he repeatedly admitted to killing the mother.

In Finding of Fact 31, the trial court concluded: “[Respondent-Father] has murdered or voluntary manslaughtered [sic] the other parent of the children and he did not commit said murder or manslaughter in self-defense or in defense of others or for some other appropriate justification.” In Finding of Fact 32, the trial court again referred back to a number of its findings in its earlier order adjudicating the children as abused, neglected, and dependent—including many of the same findings it referenced in Finding 15. In Finding 33, the trial court found grounds to terminate Respondent-Father’s parental rights, including “[Respondent-Father] has committed murder or voluntary manslaughter of the other parent of the children. In its Conclusions of Law, the trial court again determined “[Respondent-Father] has committed murder or voluntary manslaughter of the other parent of the children without justifiable defense.” The trial court further concluded it was in the best interest of the minor children to terminate Respondent-Father’s parental rights and

entered its decree accordingly. The trial court’s Order Terminating Parental Rights was not served on Respondent-Father until 2 March 2022—a month after it was entered. Respondent thereafter timely filed written Notice of Appeal from the Order Terminating Parental Rights on 1 April 2022. *See* N.C. Gen. Stat. § 7B-1001(b) (2021).

Issue

The dispositive issue on appeal is whether the trial court properly determined grounds existed to terminate Respondent-Father’s parental rights on the basis Respondent-Father committed the murder or voluntary manslaughter of the other parent of the children.²

Analysis

“Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020) (citation omitted). “At the adjudicatory stage, the petitioner bears the burden of proving by ‘clear, cogent, and convincing evidence’ the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes.” *In re A.U.D.*, 373 N.C. 3, 5-6, 832 S.E.2d 698, 700 (2019) (citing N.C. Gen. Stat. § 7B-1109(f)). We review a trial court’s

² Respondent-Father also challenges the three other grounds adjudicated by the trial court as grounds to terminate his parental rights. However, because of our disposition here, we do not reach those other arguments. *See In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014). Further, Respondent-Father raises no argument regarding the trial court’s disposition.

Opinion of the Court

adjudication of grounds to terminate parental rights “to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (citation and quotation marks omitted). “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) (citation omitted). Unchallenged findings of fact are “deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citations omitted). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

In this case, as one of the four grounds the trial court determined existed to terminate Respondent-Father’s parental rights, the trial court concluded Respondent-Father had committed murder or voluntary manslaughter of the other parent of the children. N.C. Gen. Stat. § 7B-1111(a)(8) provides, in relevant part, grounds exist to adjudicate grounds for terminating parental rights where the parent “has committed murder or voluntary manslaughter of the other parent of the child.” N.C. Gen. Stat. § 7B-1111(a)(8) (2021). In such cases, “[t]he petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was

Opinion of the Court

by way of a jury verdict or any kind of plea.” *Id.* Moreover, “[i]f the parent has committed the murder or voluntary manslaughter of the other parent of the child, the court shall consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification.” *Id.*

On appeal, Respondent-Father contends the trial court erred in concluding grounds existed to terminate Respondent-Father’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(8). Specifically, with respect to this ground, Respondent-Father argues, in the absence of a prior conviction, DSS failed to prove the elements of murder or voluntary manslaughter of the children’s mother and that the trial court failed to make any specific findings regarding the elements of murder or voluntary manslaughter and failed to specify which offense it determined Respondent-Father committed. Respondent-Father, however, offers no authority that is supportive of his positions.³

In support of its adjudication, and regarding the killing of the children’s mother, in Findings of Fact 15 and 32 the trial court referred to and relied upon its prior findings from its underlying Order adjudicating the minor children as abused, neglected, and dependent juveniles. These prior findings were also originally found by clear, cogent, and convincing evidence. Indeed, Respondent-Father does not

³ Respondent-Father cites both the statute and one case for general propositions but nothing that actually directly—or indirectly—supports his argument.

Opinion of the Court

contend these findings are unsupported by evidence and, as such, they are binding on appeal.⁴ See *T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. Respondent-Father also makes no argument the trial court erred by taking judicial notice of the underlying adjudication Order or relying on its prior findings in this respect. Furthermore, Respondent-Father makes no argument as to why Findings 15 and 32 would not support a conclusion Respondent-Father committed murder or voluntary manslaughter of the children's mother.

Unchallenged Findings of Fact 15 and 32 reflect Respondent-Father killed the children's mother and admitted to doing so to the police. The Findings reflect he killed Respondent-Mother by beating her to death over the course of multiple days using a broom handle. These Findings further reflect Respondent-Father not only forced the children to watch the beatings but encouraged them to take part. Moreover, when the children's mother begged Respondent-Father to stop, he only intensified his assault.

The unchallenged findings support a conclusion Respondent-Father committed murder of the children's mother either in the first or second-degree as defined by N.C. Gen. Stat. § 14-17. At a minimum, these Findings are certainly sufficient to establish Respondent-Father committed the elements of voluntary manslaughter. See *State v. Rummage*, 280 N.C. 51, 55, 185 S.E.2d 221, 224 (1971) ("Voluntary manslaughter is

⁴ Respondent-Father does challenge other Findings of Fact. However, ultimately, none of those are relevant to our analysis here, and we do not address those arguments.

Opinion of the Court

the unlawful killing of a human being without malice, premeditation or deliberation.”). Indeed, Respondent-Father points to no evidence of any legal justification for the killing of the children’s mother.

Thus, the trial court’s unchallenged findings of fact support its conclusion Respondent-Father committed the murder or voluntary manslaughter of the children’s mother. Therefore, the trial court properly concluded grounds existed to terminate Respondent-Father’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(8). Consequently, as the trial court properly adjudicated at least one ground upon which to terminate Respondent-Father’s parental rights, the trial court did not err in entering its Order Terminating Rights. *See In re B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court’s Order Terminating Parental Rights.

AFFIRMED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).