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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-587

Filed 18 April 2023

Caldwell County, No. 20 JA 102

IN THE MATTER OF: M.B.E.

Appeal by respondent-father from order entered 31 March 2022 by Judge Burford A. Cherry in Caldwell County District Court. Heard in the Court of Appeals 22 March 2023.

Caldwell County Department of Social Services, by Lucy R. McCarl, for petitioner-appellee.

Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-father appellant.

ARROWOOD, Judge.

Respondent-father appeals from the trial court's order terminating his parental rights to Mary.¹ Respondent-father, understanding that his initial notice of appeal was defective and his amended notice of appeal was untimely, and these notices of appeal did not convey jurisdiction to this Court, has also filed a petition for *writ of certiorari* ("PWC"). In response, the Caldwell County Department of Social Services ("DSS") has filed a motion to dismiss respondent-father's appeal, as it was

¹ A pseudonym is used to protect the juvenile's identity and for ease of reading.

untimely. In our discretion, we deny DSS’s motion to dismiss and allow respondent-father’s PWC, but hold that the trial court did not err.

I. Background

DSS has had an on and off involvement with Mary and her parents since shortly after her birth in October 2018. DSS initiated the investigation that led to this case on 29 July 2020. On that day, law enforcement responded to respondent-mother’s² house, as her brother (“uncle”) was intoxicated and locked himself in the house with Mary. When law enforcement made entry into the residence, they found uncle holding Mary with a ten inch “knife stuck into the kitchen table and a large metal sharpening tool lying on the table.” Uncle was holding Mary while threatening law enforcement and “yelling out the window at some people that he was going to kill [Mary].” The next day, respondent-mother entered into a safety plan with DSS, and agreed Mary would not be left unsupervised with uncle nor be allowed to return to the house.

On 18 August 2020, DSS was notified that Mary was with uncle and her maternal grandmother at the store, when respondent-father attempted to take Mary, uncle and respondent-father “engaged in a physical altercation while [Mary] was present.” The following day, DSS found uncle in the home with Mary and respondent-mother, despite the safety plan. On 24 August 2020, law enforcement was again

² Respondent-mother is not a party to this appeal.

called to respondent-mother's house for an issue with uncle. On that occasion, uncle refused to let respondent-mother leave with Mary, "grabbed [Mary] out of [r]espondent[-][m]other's arms and ran off the property" with Mary to an unknown location.

The next day, both respondent-mother and respondent-father submitted to drug screens. Respondent-father tested positive for marijuana, amphetamine, and methamphetamine. Due to the ongoing issues with uncle, Mary and respondent-mother went to live with respondent-father and Mary's paternal grandmother on 27 August 2020.

On 10 September 2020, law enforcement responded to respondent-father's home due to a "domestic altercation" where respondent-mother attempted to leave with Mary, and respondent-father "stabbed all four" tires of the vehicle she was attempting to flee in, while Mary and respondent-mother were still inside the vehicle. "Law enforcement reported that [Mary] had marks on her that appeared to be either infected bug bites or small burns." The following day, respondent-mother met with DSS and informed them respondent-father had "held her hostage in his home for three days and hit her on her face, arm and legs with a baseball bat while holding [Mary]." Respondent-mother also admitted to using methamphetamines with respondent-father, and informed DSS that Mary had a "knot on the back of her head" where respondent-father had hit her.

Although Mary was initially placed with a temporary safety placement, when

they were no longer able to care for her, DSS sought custody. On 14 September 2020, DSS filed a juvenile petition alleging Mary was a neglected juvenile who was not receiving proper care, supervision, or discipline and living in an environment injurious to her welfare. A nonsecure custody order was issued for Mary that same day. Mary's placement, "due to the circumstances of [her] particular case," requested her address not be disclosed "for so long as [Mary] [was] placed outside the home of either [parent][.]"

On 9 December 2020, Mary was adjudicated a neglected juvenile. As of the date of this hearing, respondent-father had not yet entered into a case plan, and his drug screen was inconclusive since the "specimen did not register a temperature[.]" Although respondent-father entered into a case plan on 12 January 2021, by the March Permanency Planning Hearing ("PPH"), he had still not completed the domestic violence program, his substance abuse treatment, and had missed all five drug screens requested by DSS. By the July 2021 PPH, respondent-father had completed a substance abuse assessment, but had not gotten a mental health assessment, and submitted to only two of his thirteen requested drug screens. Respondent-father was recommended to complete forty hours of substance abuse therapy on 15 February 2021, and by the July 2021 PPH he had only completed four sessions, his last one being on 2 March 2021. Furthermore, the two drug screens he did participate in were positive for marijuana, morphine, oxycodone, and amphetamines. During this July PPH, the court determined the "most appropriate

permanent plan for” Mary would be adoption, with a secondary plan of reunification.

Respondent-father’s efforts towards his case plan did not improve by the next court date in November 2021. Respondent-father had still not completed his domestic violence program, not addressed his mental health needs, and had not submitted to a single drug screen since July. Furthermore, from August 2021-December 2021, respondent-father had only attended four substance abuse therapy sessions.

On 15 December 2021, DSS filed a motion to terminate respondent-mother and respondent-father’s parental rights. By that time, respondent-father had still not addressed his domestic violence issues, had only attended eight of the required forty substance abuse therapy sessions, and had not submitted to any drug screens since July. Throughout the life of the case, respondent-father had only submitted to three drug screens, all of which were positive, despite DSS requesting a total of thirty-two screenings. By this time, Mary had been in DSS care for 547 days.

The matter came on for hearing in Caldwell County District Court on 15 March 2022, Judge Cherry presiding. At trial, social worker Angela Colbert (“Ms. Colbert”) testified on behalf of DSS. Ms. Colbert testified that although respondent-father never completed an anger management assessment, his substance abuse treatment recommendations, or a mental health assessment, and never obtained stable housing or employment, as required by his case plan, he did visit Mary, and “engage with her.” At recess, respondent-father left, and his attorney could not find him. Thereafter, the court found DSS had “proven the allegations in the petition”

and moved to the best interest stage of the hearing.

Ms. Colbert also spoke at the best interest stage of the proceedings. Ms. Colbert testified that Mary was currently residing in a licensed foster home that was potentially an adoptive home. She also testified that Mary was very close with the other children in the home and “bonded” to the potential adoptive parents. Ms. Colbert further testified that the bond between respondent-father and Mary was “not as strong as it had . . . been[.]” due to “the lack of time that she’s been out of his home[.]” Lastly, Ms. Colbert opined that termination of respondent-mother and respondent-father’s rights would aid in accomplishing the permanent plan of adoption.

Following Ms. Colbert’s testimony, respondent-father returned to the courtroom. The court reopened the evidentiary portion of the adjudication hearing so respondent-father would have the opportunity to testify. Respondent-father testified that he did not recall signing a case plan, but he did remember stating he would go to classes. Respondent-father also testified that he was currently employed, but acknowledged he was behind in child support, as he had never made a payment. When asked why he had never completed the batterer’s program, respondent-father stated he worked in the woods and didn’t get a cellphone signal and was never contacted about it. Respondent-father later testified he never brought his phone to work, which is why he had missed so many drug screens and denied that he had only attended eight substance abuse therapy sessions, claiming he had attended closer to

twenty. Lastly, respondent-father acknowledged that he would fail a drug screen if tested the day of the hearing, and that the screen would be positive for marijuana, Vicodin, and hydrocodone.

Following the hearing, the trial court terminated respondent-mother and respondent-father's parental rights in an order filed 31 March 2022. The trial court found grounds existed to terminate respondent-father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), (a)(6), (a)(7), and that termination was in Mary's best interest. Respondent-father filed his initial appeal on 28 April 2022, incorrectly identifying the court he was appealing to as the North Carolina Supreme Court. On 6 May 2022, respondent-father filed an amended notice of appeal, which corrected this error, but was untimely. Recognizing this amended notice of appeal was untimely, and therefore does not convey jurisdiction to this Court, respondent-father also filed a PWC.

II. Discussion

Respondent-father's only argument on appeal is that the trial court's order terminating his parental rights must be vacated since it did not resolve conflicts in the evidence to allow a meaningful appellate review since "a vast majority of the findings of fact . . . were verbatim recitations of the allegations in DSS' motion to terminate [his] parental rights." However, respondent-father recognizes that this Court has never ruled that "findings by the trial court are insufficient simply because they are similar, or even identical, to the wording of the juvenile petition." *In re J.W.*,

241 N.C. App. 44, 48, 772 S.E.2d 249, 253, *disc. review denied*, 368 N.C. 290, 776 S.E.2d 202 (Mem) (2015). But, this Court does “prohibit findings that do not actually *find* any facts.” *Id.* (emphasis in original). In *In re J.W.*, this Court found that although the findings of fact in the trial court’s order appeared to be “cut-and-pasted” from the juvenile petition, evidence to support these contentions was presented during the hearing and therefore were “the result of [the trial court’s] own independent, reasoned decision.” *Id.* at 49, 772 S.E.2d at 254.

The cases relied upon by respondent-father for this contention are distinguishable. For example, in *In re Anderson*, this Court found the order of adjudication was not sufficient to support the trial court’s conclusions of law because it used the word “alleged” when discussing the grounds for termination. *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). Furthermore, in *In re O.W.*, this Court held that the trial court’s findings of fact were not sufficient because they were “unsupported by any evidence[,]” and recitations of witness testimony. *In re O.W.*, 164 N.C. App. 699, 702-703, 596 S.E.2d 851, 854 (2004).

Still, respondent-father further argues the trial court did not “make specific findings of fact resolving conflicting evidence presented at the” hearing. However, this argument ignores our precedent. When the trial judge is “acting as ‘both judge and jury[,]’” they are responsible for resolving “any conflicts in the evidence,” “weigh[ing] all of the competent evidence, and . . . determin[ing] the credibility of the witnesses and the weight to be given to their testimony.” *In re A.D.*, 278 N.C. App.

637, 641, 863 S.E.2d 317, 321 (2021) (citation omitted); *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citation omitted). “Accordingly, ‘appellate courts are bound by the trial courts’ findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.’” *In re A.D.*, 278 N.C. App. at 641, 863 S.E.2d at 321 (citation omitted). Thus, we will not question whether the trial court considered the conflicting evidence presented in the form of respondent-father’s testimony. The trial court heard and considered this evidence, weighed it, and clearly did not deem it credible enough to contradict the evidence presented by DSS.

Lastly, defendant contends the findings of fact were insufficient for this Court to “conduct a meaningful review of the conclusions of law” and determine whether the “findings of fact are supported by clear, cogent, and convincing evidence.” We find this argument likewise without merit. As discussed above, the trial court made proper findings of fact, even if the findings were identical to the wording on the petition.

We do not address the findings of fact to determine whether they are supported by clear, cogent, and convincing evidence, as respondent-father did not argue the findings of fact, even if proper, were insufficient. Thus, the trial court’s findings as to the adjudication and best interest of Mary are binding on appeal. *See In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019).

III. Conclusion

For the foregoing reasons, we affirm the trial court’s order terminating

IN RE: M.B.E.

Opinion of the Court

respondent-father's parental rights.

AFFIRMED.

Judges DILLON and COLLINS concur.

Report per Rule 30(e).