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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-229

Filed 18 April 2023

Martin County, No. 18 JT 29

IN THE MATTER OF: P.C.,

A juvenile.

Appeal by respondent-father from order entered 14 December 2021 by Judge Christopher B. McLendon in Martin County District Court. Heard in the Court of Appeals 4 April 2023.

J. Edward Yeager, Jr., for petitioner-appellee Martin County Department of Social Services.

Wendy C. Sotolongo, Parent Defender, by Annick Lenoir-Peek, Deputy Parent Defender, for respondent-appellant father.

PER CURIAM.

Respondent-Father appeals from the trial court's order terminating his parental rights to his minor child, P.C. ("Paige").¹ After careful review, we affirm.

I. Factual and Procedural Background

On 5 June 2018, the Martin County Department of Social Services ("DSS") filed

¹ We employ a pseudonym for the juvenile to protect her privacy and for ease of reading. Although the parties stipulated to the use of a different name when filing the record on appeal, Respondent used the name "Paige" in his brief and the Department of Social Services adopted the same name for continuity.

a petition alleging that Paige was a dependent juvenile and obtained nonsecure custody of her. Respondent-Father was not mentioned in the petition, as his identity was not yet known. The petition alleged that on 22 November 2017, Respondent-Mother left Paige and her sibling in the care of the Baker family in Williamston until she could find stable housing and employment. The Bakers cared for Paige and her sibling during the week and the juveniles spent weekends with their maternal aunt. While in the care of the Bakers, DSS assisted the Bakers with daycare and other services for Paige.

The Bakers informed DSS they could no longer care for Paige and her sibling. On 31 May 2018, DSS informed Respondent-Mother that other arrangements needed to be made for the children. Respondent-Mother provided DSS with the name of a potential alternate arrangement, but that family could not meet with DSS until 11 June 2018. Respondent-Mother also refused to provide DSS with her current address.

On 26 June 2018, the trial court ordered testing of any reputed or legal father in order to identify Paige's biological father. After receiving genetic test results, Respondent-Father stipulated that he was Paige's biological father.

The trial court conducted adjudication and disposition hearings on DSS's petition on 13 November 2018. Respondent-Father was present and represented by counsel. After accepting the facts to which the parties (including Respondent-Father) stipulated, the trial court adjudicated Paige to be a dependent juvenile by order entered that same day. The trial court also entered a disposition order continuing

Paige's custody with DSS. The trial court ordered Respondent-Father to "cooperate with [DSS] regarding the assessment of his home. If his home is approved, then [DSS] shall have the authority to move [Paige] to his home." On 31 December 2018, Respondent-Father married the mother of his youngest child. At the time of his marriage, Respondent-Father's children lived with their mothers.

On 11 February 2019, the trial court held an initial permanency planning hearing. Following the hearing, the trial court set the primary permanent plan as reunification with a parent and the secondary permanent plan as guardianship. At a permanency planning review hearing on 14 October 2019, the trial court changed the primary permanent plan to adoption and the secondary permanent plan to reunification with a parent. Respondent-Father never cooperated with DSS's attempts to arrange a home study, as ordered by the trial court, and never entered into a case plan with DSS.

On 18 May 2021, DSS filed a motion to terminate Respondents' parental rights to Paige.² As regards Respondent-Father, DSS alleged the following grounds for termination: (1) willfully leaving Paige in foster care for more than twelve months without making reasonable progress in correcting the conditions which led to her removal; (2) failing to pay a reasonable portion of Paige's cost of care for a continuous period of six months; (3) failing to establish paternity; and (4) being incapable of

² Respondent-Mother is not a party to this appeal. Accordingly, this opinion does not discuss the termination of Respondent-Mother's rights.

providing proper care and supervision such that Paige is a dependent juvenile. *See* N.C. Gen. Stat. § 7B-1111(a)(2)–(3), (5)–(6) (2021).

Following a hearing held on 16 November 2021, the trial court entered an order terminating Respondent-Father’s parental rights on 14 December 2021. The court found clear, cogent, and convincing evidence of the grounds alleged by DSS in its motion. The trial court also concluded that termination of Respondent-Father’s parental rights was in Paige’s best interests. Respondent-Father appeals.

II. Discussion

Respondent-Father argues that the trial court erred in terminating his parental rights: (1) on the basis of failing to establish paternity, (2) on the basis of “incapacity,” (3) on the basis of willfully failing to pay child support, and (4) on the basis of willfully leaving Paige in foster care without remedying the conditions leading to her removal.

A. Standard of Review

“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, 796–97 (2020). 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 N.C. Gen. Stat. § 7B-1111(a). N.C. Gen. Stat. § 7B-1109(f). A trial court may terminate parental rights if one or more grounds for termination are found, and the reviewing court may affirm

if any termination ground is supported by findings of fact based on clear, cogent, and convincing evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982).

We review an adjudication order “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 omitted). “Findings of fact not challenged by respondent 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). “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).

B. Analysis

We begin by examining whether the court erred in terminating Respondent-Father’s parental rights on the basis of willfully failing to pay a reasonable portion of the cost of Paige’s care pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). Section 7B-1111(a)(3) provides that parental rights may be terminated if:

[a] juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3).

For this ground, a trial court is required to make a finding that the “parent has

[the] ability to pay support[.]” *In re Ballard*, 311 N.C. 708, 716–17, 319 S.E.2d 227, 233 (1984). “[W]here the trial court finds that the respondent has made no contributions to the juvenile’s care for the period of six months immediately preceding the filing of the petition and that the respondent had income during this period, the trial court properly terminates respondent’s rights” *In re J.E.E.R.*, 378 N.C. 23, 29, 859 S.E.2d 191, 195 (2021).

In *In re J.A.E.W.*, our Supreme Court affirmed a termination of parental rights based on N.C. Gen. Stat. § 7B-1111(a)(3) where the respondent argued that the trial court did not consider his income and living expenses in order to determine that he had the ability to contribute “more than zero to his child’s cost of care.” 375 N.C. 112, 117, 846 S.E.2d 268, 272 (2020). Our Supreme Court reasoned that such findings were not necessary where the respondent made “no payments whatsoever” though he “was employed with some income.” *Id.*; see also *In re T.D.P.*, 164 N.C. App. 287, 290–91, 595 S.E.2d 735, 738 (2004) (“[B]ecause the trial court in the instant case correctly found that [the] respondent was able to pay some amount greater than zero during the relevant time period, we hold that sufficient grounds existed for termination of [the] respondent’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(3).”), *aff’d*, 359 N.C. 405, 610 S.E.2d 199 (2005).

Here, the trial court made the following findings of fact:

- a. The juvenile has been placed in the custody of a county department of social services and [Respondent-Father], for a continuous period of six months next preceding the

filing of the . . . motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

- b. A referral was sent from [DSS] to the child support enforcement agency, but no child support case was ever filed against [Respondent-Father]. Nevertheless, [Respondent-Father] is presently employed, and has been employed for much of the life of this case. He has had the means and ability to pay some portion of the juvenile's care and expenses. [Respondent-Father] was at all times aware that the juvenile was in DSS custody. Despite that, [Respondent-Father] has never paid any monetary support to DSS or to the foster parents. [Respondent-Father] likewise never gave items of clothing or other tangible items to DSS or to the foster parents for the benefit of the juvenile. [Respondent-Father] claimed to have given some unidentified things to [Respondent-Mother] to pass along to the juvenile, but the Court does not find this credible.
- c. [DSS] has spent money toward the care of this juvenile, including monthly foster care payments and other expenses. [Respondent-Father] has paid none of these expenses. [DSS] has at all times been willing to accept any payments or items from [Respondent-Father] for the use and benefit of the juvenile.

Respondent-Father argues that the trial court was not presented evidence of the specific sum DSS expended for Paige's care and "was without sufficient evidence to determine that [Respondent-Father] could pay any sum for the support of his daughter or that such failure [to pay] was willful." He asserts that he was obligated by court order to pay child support for three other children; he was in the process of modifying his existing child support obligations for two of his children; and if he failed

to meet his obligations under the existing child support orders, he would be subject to contempt proceedings. Respondent-Father contends that he was not on notice of a support obligation for Paige, and argues that his court ordered child support obligations for his other children should be considered in determining whether he had the ability to make child support payments for Paige.

Though Respondent-Father challenges the termination of his parental rights on the basis that DSS did not provide the amount spent in child support within the relevant period, Respondent-Father does not contest the trial court's findings that DSS "has spent money toward the care of" Paige or that Respondent-Father "has never paid any monetary support[.]" Evidence of a specific amount expended is unnecessary where "there is no requirement that the trial court make a finding as to what specific amount of support would have constituted a reasonable portion under the circumstances." *In re J.E.M., Jr.*, 221 N.C. App. 361, 364, 727 S.E.2d 398, 401 (2012) (citation omitted); *see also J.A.E.W.*, 375 N.C. at 117–18, 846 S.E.2d at 271–72.

Respondent-Father's contention before this Court that there is insufficient evidence to determine whether he could pay any amount for Paige's support is in contradiction to his acknowledgement before the trial court during the termination hearing that he "had the income to pay th[e] child support" and would "willingly" have done so if instructed. Moreover, Respondent-Father contended in his closing argument that the evidence showed he had the ability to care for the juvenile because

he was employed, had a residence, and had other children in his care. Respondent-Father will not be allowed to contend otherwise before this Court, as “[i]t is well established that the law does not permit parties to swap horses between courts in order to get a better mount in the appellate court.” *In re J.B.*, 172 N.C. App. 1, 17, 616 S.E.2d 264, 274 (2005) (citation and internal quotation marks omitted).

As to Respondent-Father’s contention that he was not on notice of a support obligation for Paige, our Supreme Court has stated that parents have an inherent duty to support their children and may not use the absence of a court order, notice, or knowledge of a requirement to pay support as a defense to termination of parental rights on this ground. *In re D.C.*, 378 N.C. 556, 561–63, 862 S.E.2d 614, 617–18 (2021). Our courts have not required the initiation of a child support case in order to terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). *See, e.g., id.*; *In re S.E.*, 373 N.C. 360, 366, 838 S.E.2d 328, 332–33 (2020).

Finally, Respondent-Father asserts that he has other children and was obligated to satisfy other child support orders at the time of the termination hearing. Respondent-Father contends that these other child support obligations should have been considered in the determination that he had the ability to provide child support for Paige. In support of this argument, Respondent-Father cites the North Carolina Child Support Guidelines (“the Guidelines”) for the directive: “The fact that a parent pays child support for two or more families under two or more child support orders, separation agreements, or voluntary support arrangements may be considered as a

factor warranting deviation from the child support guidelines.” N.C. Child Support Guidelines, AOC-A-162, at 4 (2019).

Our Supreme Court has explained that “[a] parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent’s ability or means to pay. The requirement applies irrespective of the parent’s wealth or poverty.” *J.E.E.R.*, 378 N.C. at 27, 859 S.E.2d at 194 (citation omitted). Findings concerning a parent’s living expenses might be relevant as to “whether the amount he contributed to the cost of [the child’s] care was reasonable,” but such findings are not necessary where the parent had income and made no contributions to the child’s care at all. *J.A.E.W.*, 375 N.C. at 117–18, 846 S.E.2d at 272. In such circumstances, “zero is not a reasonable portion[.]” *J.E.M., Jr.*, 221 N.C. App. at 364, 727 S.E.2d at 401 (citation omitted).

Respondent-Father testified that he had the income with which to pay child support for Paige, and the trial court found that Respondent-Father “ha[s] the means and ability to pay some portion of the juvenile’s care and expenses.” It is also unchallenged that Respondent-Father “has never paid any monetary support” for Paige and “likewise never gave items of clothing or other tangible items.” In these circumstances, the failure to contribute at all to the juvenile’s support is not reasonable and findings of fact regarding the parent’s other child support obligations are not necessary. *See J.E.E.R.*, 378 N.C. at 28–29, 859 S.E.2d at 195–96; *see also J.A.E.W.*, 375 N.C. at 117–18, 846 S.E.2d at 272.

The trial court's findings of fact that Respondent-Father was employed for much of the life of the case; had the ability to pay some portion of the juvenile's care and expenses; and failed to provide "any" monetary support, items of clothing, or other tangible items for the benefit of the juvenile all support its conclusion that Respondent-Father willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so during the relevant period. Accordingly, we uphold the trial court's adjudication of grounds to terminate Respondent-Father's parental rights in Paige pursuant to N.C. Gen. Stat. § 7B-1111(a)(3).

Because we have concluded that one termination ground is supported, we decline to address Respondent-Father's arguments as to the remaining termination grounds found by the trial court under N.C. Gen. Stat. § 7B-1111(a)(2), (a)(5), and (a)(6). *See Moore*, 306 N.C. at 404, 293 S.E.2d at 133.

III. Conclusion

The trial court's findings of fact support its determination that Respondent-Father's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). As Respondent-Father does not challenge the trial court's ultimate conclusion that termination of his parental rights is in Paige's best interest, we affirm the court's order.

AFFIRMED.

Before a panel consisting of Judges ZACHARY, MURPHY, and ARROWOOD.

IN RE: P.C.

Opinion of the Court

Report per Rule 30(e).