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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-650

Filed 06 June 2023

Wake County, Nos. 19JT140, 19JT141

IN THE MATTER OF:

L.I.C.M.; C.E.M., Minor Juveniles.

Appeal by respondent-appellant-father from order entered 26 April 2022 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 10 May 2023.

J. Thomas Diepenbrock, for respondent-appellant-father.

Wake County Attorney's Office, by Senior Assistant County Attorney Mary Boyce Wells, for the petitioner-appellee Wake County Health & Human Services.

Michelle FormyDuval Lynch for the appellee Guardian ad Litem.

GORE, Judge.

Respondent-father appeals the termination of his parental rights of Luis and Celia.¹ Respondent-father argues the trial court erred by determining grounds for neglect existed in support of terminating his parental rights, and by determining

¹ Pseudonyms are used to protect the identity of the juveniles.

grounds pursuant to sections 7B-1111(a)(2) and 7B-1111(a)(3) existed to terminate his parental rights. Upon review of the parties' briefs and the record, we affirm.

I.

Wake County Health and Human Services ("WCHHS") filed a petition of neglect on 28 June 2019 for Celia and Luis. Luis and his mother tested positive for methadone and oxycodone at his birth. Luis also had small hemorrhages and white matter in his brain at birth, which is associated with the mother's drug use. WCHHS originally sought to temporarily place Luis's sister, Celia with relatives and transfer Luis to the relatives' home upon his hospital discharge, but the parents refused this possible plan. WCHHS placed Celia in a cousin's home under a temporary safety agreement but had to remove Celia and place her in a foster home after the parents began living with the cousin in violation of the agreement. Luis joined Celia at the same foster home upon his discharge from the hospital.

The children were adjudicated neglected and dependent by consent order on 27 August 2019. The children's adjudication for neglect was based upon the determination they "do not receive proper care and supervision from the [parents] and live in an environment injurious to their welfare" pursuant to section 7B-101(15). Respondent-father was determined to be the father of both children through birth certificate and paternity testing as mother and father are unmarried.

The mother is unemployed and receives disability benefits. The mother was diagnosed with severe opiate disorder and mild cocaine disorder. Although multiple

tests returned positive for cocaine, she continued to state she had not used drugs for more than a year. The mother receives daily doses of methadone at a behavioral clinic due to her disorders and was provided a Guardian ad Litem for this case because of intellectual disabilities. During the time leading up to the termination hearing, the mother was charged with a DWI in which respondent-father was a passenger. The mother also continued to fall asleep during visitations and court hearings, which was attributed to the methadone. The mother has four other children no longer in her care due to long term substance abuse.

Respondent-father and the mother continue to reside together. Respondent-father and mother first lived in a trailer infested with roaches and multiple safety hazards to children until they were evicted and moved to a home in Harnett that was also in disrepair and unsuitable for children. Respondent-father is a self-employed mechanic who works four to twelve hours a day. Respondent-father and mother both reported forms of domestic abuse within their relationship. They were required to visit the children separately due to their discord.

Respondent-father initially lacked understanding of his responsibility in the removal of the children for neglect. Respondent-father was given the following case plan:

- a. Enter into a written visitation agreement with WCHHS.
- b. Obtain and maintain housing sufficient for him and the children.
- c. Obtain and maintain legal income sufficient for him and the children and provide written verification to the social worker monthly.

- d. Complete an assessment through the UNC Parenting Evaluation Program and comply with recommendations. Those recommendations included:
 - i. Complete a medical physical examination.
 - ii. Complete individual outpatient psychotherapy to address partner abuse and partner substance abuse.
 - iii. Complete 12 therapy sessions and parenting education.
 - iv. Complete a psychoeducational program regarding raising a child with special needs.
- e. Maintain regular contact with WCHHS, notifying the agency of any change in circumstances within five business days.

Respondent-father took steps to repair the home, attended weekly supervised visits, sent verification of \$1300.00 in monthly income to the social worker, and participated in the recommended treatments and parenting plans. However, respondent-father did not complete a program on raising a child with special needs and failed to comprehend the danger of leaving the children with their mother. During supervised visits, both parents failed to recognize hazards for the children or remember to assist with basic needs without the social worker's assistance. Respondent-father "downplayed" the mother's DWI during the termination hearing and testified he would have to leave the children with the mother at times due to his work schedule. The trial court determined despite the participation in the programs offered, the respondent-father failed to resolve the likelihood of a repetition of neglect due to the serious concerns with the mother, his inability to appropriately parent during visits, and the medical and special needs of the children. In summary, the trial court determined the parents failed to show meaningful improvement to the problems that required the children's removal.

After multiple permanency planning hearings, the trial court determined the parents were no longer making progress at reunification and updated the primary plan to adoption. WCHHS filed a petition for termination on 24 February 2021. The termination hearings occurred on 1 October 2021 and 27 October 2021, and the trial court entered the order terminating respondent-father's parental rights on 26 April 2022. On 23 May 2022, respondent-father appealed of right pursuant to section 7B-1001(a)(7).

II.

Respondent-father argues the trial court erred in the following: (1) by concluding grounds for neglect existed to support termination of his parental rights; and (2) by concluding grounds existed to support termination of his parental rights pursuant to sections 7B-1111(a)(2) and 7B-1111(a)(3). We only consider respondent-father's argument the trial court erred by concluding grounds for neglect existed to support termination of his parental rights.

We review the trial court's findings of fact within the adjudicatory stage "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020) (citation omitted). If the findings are supported by clear, cogent, and convincing evidence, then they are considered conclusive even if "some evidence supports contrary findings." *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). "Clear, cogent and convincing describes an evidentiary

standard stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt.” *In re V.L.B.*, 168 N.C. App. 679, 683, 608 S.E.2d 787, 790 (2005) (internal quotation marks and citations omitted). It is evidence that “should fully convince [the finder of fact].” *Id.* (alteration in original). “Unchallenged findings of fact” are deemed “binding on appeal.” *In re D.W.P.*, 373 N.C. at 330, 838 S.E.2d at 400. We review the trial court’s conclusions of law de novo. *In re K.N.*, 381 N.C. 823, 827, 874 S.E.2d 594, 598 (2022).

Respondent-father first challenges the trial court’s findings of fact 33, 42, 43, 46, 47, and 48 to support his argument the trial court lacked grounds to conclude he neglected the children. These challenged findings state:

33. The parents never sought meaningful domestic violence or other family counseling and now minimize any aggression or violence in their relationship.

42. The plan presented by the father is neither realistic nor appropriate for his children. The [c]ourt has previously given the parents additional time to formulate a suitable plan and has clearly articulated the [c]ourt’s expectations in this regard.

43. The father made some progress on his case plan, even after several services were delayed due to Covid-19. He participated in treatment as well as parenting education. However, he failed to complete a program specifically tailored to help him raise a child with special needs as ordered by the [c]ourt. Perhaps more importantly, he also never meaningfully accepted responsibility for his own role in the children’s removal or continued placement in foster care.

46. Regardless of the parents’ participation in services, the [c]ourt finds that neither parent has adequately addressed the circumstances that led to the children’s removal from their care. Both parents love and want these children, but neither can appropriately provide daily parenting.

The responsibilities of parenting go far beyond what is expected during brief visits and there is little credible evidence that the children would remain safe in their care.

47. Neither parent can provide proper care and supervision of the children, and there is a reasonable probability that such incapability would continue for the foreseeable future.

48. It is probable that there would be a repetition of neglect if the children were returned to the parents' care.

Respondent-father specifically challenges the portion of 33 that "the parents never sought meaningful domestic violence or other family counseling" claiming it is unsupported because he completed the education courses and therapy related to domestic violence. The trial court included the following unchallenged findings related to the domestic abuse and family counseling that are binding on appeal:

32. The relationship between the mother and the father has been volatile at times. The mother reported that the father was controlling and required her to remain in his vehicle while he worked up to nine-hour periodic shifts. The father alternatively reported that the mother physically and verbally abused him while threatening to take his children away. Both parents sometimes denied being in a relationship at all and instead stated that they were just roommates. At the time of this hearing, the parents continued to live together and acknowledged that they remained in a romantic relationship.

33. The parents exposed to[sic] the children to their discord during some visits. During a visit in April 2020, the parents argued in front of the children during a visit about where to park the car, resulting in intervention from the social worker.

33. [They] now minimize any aggression or violence in their relationship.

37. Visits between the children and the father are somewhat better, . . . The quality of the interaction significantly improved after the parents were ordered to attend visits separately.

38. While the father has complied with some services and has maintained a good bond with the children, he continues to enable and minimize the mother's behaviors. He plainly does not understand the danger presented to the children by the mother's inability to stay conscious and present in her circumstances. . . .

39. When asked why he allowed the mother to drive while impaired, he downplayed the incident and blamed her impairment on medications. He believes that the children are fine in her care.

While the trial court could have used a better term than "never" within the challenged finding, the unchallenged findings taken together provide clear, cogent, and convincing evidence to support the challenged portion of finding 33. Although respondent-father participated in the programs stated, the trial court determined through conflicting evidence that the programs did not translate into a difference in their relationship. This is implied by the term "meaningful" within the challenged finding and additionally by the previously stated binding findings.

In challenging finding of fact 42, respondent-father points to the family friend, Rosio Barranca, who testified a willingness to care for the children when respondent-father was away from the home. He also argues the court's orders do not "clearly articulate" its expectations for a suitable support person. The following unchallenged findings of fact support this challenged finding:

35. Even after two years of additional visits, services and support, the mother does not recognize obvious safety hazards to the children.

39. [Father] believes that the children are fine in [mother's] care.

40. The father states that he works full-time and would have to rely on the mother at least some of the time for care of the children. [29. [Mother] also has not utilized a support person as recommended.]

41. During his in-court testimony, the father offered to hire a family friend to provide childcare during the day. At no point had the father previously suggested this arrangement to the GAL or WCHHS. The family friend testified at this hearing that she would be available to care for the children throughout the day, but there were no details regarding the children's potential care for other times when the father would be working. The friend stated that she had never been to the parents' home and never met [the father]. In fact, the father did not know the friend's name until she was called to testify. It was also not clear how long this childcare arrangement would last.

These findings taken together provide clear, cogent, and convincing evidence to support the challenged finding of fact 42.

The latter portion of the trial court's finding was also supported by clear, cogent, and convincing evidence. The trial court provided additional time between August 2020 and December 2020 for the parents to make adjustments to better "demonstrate increased awareness of how their behaviors impact the children and . . . provide [the] court with a viable and appropriate parenting plan." A consistent theme throughout the various court orders was the concern for the parents to have "a viable parenting plan . . . to keep the children safe and engaged." Despite the programs and services completed the trial court found they "still have not been able to demonstrate any meaningful improvement of the circumstances that lead to the children's removal." Accordingly, the lack of a "realistic" parenting plan was not due to the court's failure to articulate such a need.

Respondent-father argues finding of fact 43 is not supported by clear and convincing evidence because it is misleading. He claims the testimony at trial suggested it was the therapist's duty to refer him to the required program, and the therapist failed to. However, any offers by a therapist to assist in finding a program did not mitigate the specified portion of respondent-father's case plan to "[c]omplete a psychoeducational program regarding raising a child with special needs." His case plan is court ordered, and this paired with respondent-father's testimony that because he is not a doctor, he sees Luis as a normal child and could not speak to the special needs, suggests an unwillingness to accept Luis's current needs. Respondent-father does not dispute whether he completed this specified program, and therefore given the evidence, the finding is supported by clear, cogent, and convincing evidence.

Respondent-father argues finding 46 lacks clear and convincing evidence because the evidence demonstrates he completed the majority of his case plan, which was crafted for the purpose of addressing what led to the removal of his children. The remainder of finding 46, which is unchallenged, gives context to the challenged portion. The trial court stated, "neither can appropriately provide daily parenting . . . and there is little credible evidence that the children would remain safe in their care." The trial court found respondent-father "never meaningfully accepted responsibility for his own role in the children's removal or continued placement in foster care." Further, the trial court found the father would still consider keeping the children with the mother despite her lack of demonstrated ability to care for the

children alone. In further unchallenged findings, respondent-father “downplayed” the mother driving while impaired and he failed to recognize the hazard of the mother’s difficulty staying conscious. These findings taken together provide clear, cogent, and convincing evidence to support the challenged portion of finding 46.

Respondent-father argues finding of fact 47 does not apply to him and was instead a support for the grounds within the mother’s termination hearing. However, he argues even if the finding was intended as support for his termination grounds, it falls short of clear and convincing evidence because respondent-father complied with court ordered services. Despite respondent-father’s argument, this finding is based upon the compilation of findings that suggest despite respondent-father participating in the programs and services offered by the court he still exhibited a lack of understanding as to what caused the removal of the children. These findings included: he intended to still leave the children with the mother; he failed to see the danger involved with the mother driving impaired; he failed to demonstrate he could care for the children alone while in supervised visits; and he failed to understand the needs of the children, especially his son who has special needs. This finding is supported by clear, cogent, and convincing evidence.

Finally, respondent-father argues finding 48 is a conclusory statement rather than a finding. He argues whether it is a finding or conclusion it is not supported by clear and convincing evidence. We agree with respondent-father that this finding is a conclusion of law rather than a finding. *See In re J.O.D.*, 374 N.C. 797, 807, 844

S.E.2d 570, 578 (2020) (“[T]he trial court’s determination that neglect is likely to reoccur . . . is more properly classified as a conclusion of law.”). In such a case, we are simply required to treat the “findings of fact [which] are essentially conclusions of law . . . as such on appeal.” *Id.*

Having determined the challenged findings are supported by clear, cogent, and convincing evidence, we now consider whether the trial court’s findings support its conclusion respondent-father neglected the children within the meaning of neglect under section 7B-101(15) and pursuant to section 7B-1111(a)(1). Section 7B-1111(a)(1) is a ground for termination when “[t]he parent has . . . neglected the juvenile. The juvenile shall be deemed . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of [section] 7B-101.” N.C. Gen. Stat. § 7B-1111(a)(1) (2022). Neglect within section 7B-101(15) means,

Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker does any of the following:

- a. Does not provide proper care, supervision, or discipline.
- b. Has abandoned the juvenile.
- c. Has not provided or arranged for the provision of necessary medical or remedial care.
- d. or whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter;
- e. Creates or allows to be created a living environment that is injurious to the juvenile’s welfare.

...

N.C. Gen. Stat. § 7B-101(15) (2022). In a situation in which the children have been removed from the “parent[s] for a long period of time, the petitioner must prove (1)

prior neglect of the child by the parent and (2) a likelihood of future neglect of the child by the parent.” *In re D.W.P.*, 373 N.C. at 339, 838 S.E.2d at 405.

The trial court included extensive findings of fact demonstrating the children were neglected at the time they were removed from the home. Respondent-father took steps to complete his case plan but continued “to enable and minimize the mother’s behaviors.” He failed to understand the children’s needs, the dangers present if he left the children alone with the mother (which he testified he likely would), and to accept his responsibility in what led to the children’s removal from the home, nor did he adequately address the issues which led to their removal. Accordingly, the trial court included findings of fact to support the trial court’s conclusion respondent-father neglected the children and would likely repeat this neglect if the children returned to his care.

Although respondent-father also challenges the grounds for termination pursuant to sections 7B-1111(a)(2) and 7B-1111(a)(3), our Supreme Court has previously stated,

It is well established that an adjudication of any single ground for termination under N.C.G.S. § 7B-1111(a) will suffice to support a trial court’s order terminating parental rights. Therefore, if we uphold any one of the three statutory grounds adjudicated by the trial court, we need not review the remaining grounds.

In re L.M.M., 375 N.C. 346, 349, 847 S.E.2d 770, 773 (2020). Because we determine the trial court did not err in concluding a ground for termination pursuant to section 7B-1111(a)(1), we do not consider the remaining grounds challenged.

III.

For the foregoing reasons we conclude the trial court did not err in concluding grounds existed to terminate respondent-father's parental rights.

AFFIRMED.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).