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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-778

Filed 06 June 2023

Wake County, Nos. 19 JT 170-71

IN THE MATTER OF: A.H.F., A.M.F.

Appeal by Respondent-father from order entered 13 June 2022 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 5 May 2023.

Mary Boyce Wells for Petitioner-Appellee Wake County Department of Health and Human Services.

Mercedes O. Chut for Respondent-Appellant Father.

Parker, Poe, Adams & Bernstein LLP, by R. Bruce Thompson, II, for guardian ad litem.

GRIFFIN, Judge.

Respondent-father Phillip Foy appeals from the trial court's order terminating his parental right to his minor children, Anna and April.¹ We hold that the trial court committed no error.

¹ We use a pseudonym for ease of reading and to protect the identity of the juveniles. See N.C. R. App. P. 42(b).

I. Factual and Procedural Background

Respondent-father has two minor children, Anna and April. On 4 June 2019, Respondent-father was arrested and charged with murder, armed robbery, and illegal possession of a firearm in Boston.

Wake County Health and Human Services (“WCHHS”) was contacted on 24 July 2019 by the Department of Children and Families in Fall River, Massachusetts, where they had ongoing concerns about the children’s failure to attend school, medical neglect, and housing instability.

Following Respondent-father’s arrest, Anna and April’s mother (“Mother”) took them to Georgia to stay with their great aunt. The great aunt was unwilling to care for the children, so Mother contacted their paternal grandmother (“Grandmother”) for support. Grandmother drove to Georgia and returned to North Carolina with the children. Two weeks later, Grandmother traveled to Georgia, with the children, to return them to Mother, but Mother never came to pick up the children.

WCHSS filed a petition on 22 August 2019, alleging the children were neglected and dependent juveniles. An adjudication hearing was held on 24 September 2019 with neither parent in attendance. Respondent-father remained incarcerated at the time of the hearing. The children were removed from Grandmother’s care on 18 September 2020 per her request. While still incarcerated, Respondent-father appeared via WebEx at review hearings held on 10 October 2020 and 16 December 2020. A motion for termination of parental rights was filed on 30

April 2021 and hearings were held on 9 December 2021, 4 March 2022, and 30 March 2022. On 13 June 2022, the trial court entered an order terminating both Mother's and Respondent-father's parental rights. Respondent-father filed a notice of appeal on 12 July 2022.

II. Standard of Review

This Court has long held that “[t]he standard for review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent[,] and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984) (citations omitted).

III. Termination of Parental Rights

Respondent-father contends the trial court erred “in terminating [his] parental rights on the ground of neglect solely because of his incarceration and the [trial] court’s improper assumption that [he] was guilty of the crimes charged.” Specifically, Respondent-father asserts (A) the “trial court’s determination that [he] is guilty as charged and will receive a lengthy prison sentence has no evidentiary or legal basis”; and (B) “the record does not contain sufficient evidence to establish [he] has neglected the children by failing to provide love, support, or affection or by failing to correct conditions that caused neglect in the past.” Additionally, Respondent-father asserts “the trial court erred in terminating [his] parental rights for dependency under N.C. Gen Stat. 7B-1111(a)(6) where [Grandmother] offered an appropriate alternative

childcare arrangement.”

A. Lack of Appropriate Childcare Arrangements

Respondent-father asserts that Grandmother was “an appropriate alternative caregiver” and that the trial court erred in terminating his parental rights under N.C. Gen. Stat. § 7B-1111(a)(6).

Section 7B-1111(a)(6) of our General Statutes states that grounds for termination of parental rights exists if it is determined “[t]hat the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future.” N.C. Gen. Stat. § 7B-1111(a)(6) (2021). Further, our Supreme Court stated “the trial court’s findings regarding this ground ‘must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.’” *In re L.R.S.*, 237 N.C. App. 16, 19, 764 S.E.2d 908, 910 (2014) (quoting *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005)). Moreover, “a trial court may adjudicate the nonexistence of this ground by finding the absence of either element, or by finding the petitioner’s failure to prove either element by clear, cogent, and convincing evidence.” *In re K.R.C.*, 374 N.C. 849, 859–60, 845 S.E.2d 56, 63 (2020) (citations omitted). “‘The weight, credibility, and convincing force of such evidence is for the trial court, who is in the best position to observe the witnesses and make such determinations.’” *Macher v. Macher*, 188 N.C. App. 537,

540–41, 656 S.E.2d 282, 284 (2008) (citation omitted).

Respondent-father asserts the trial court erred in Finding of Fact 37 as it was not supported by clear and convincing evidence because the children received excellent care in Grandmother's home. Specifically, Finding of Fact 37 states:

At the request of [Grandmother], the children were removed from her home and placed in a licensed foster home on September 18, 2020.

Despite Respondent-father's contention here, evidence presented during the adjudication hearing suggests otherwise. Notably, at the hearing, Bryant, the WCHHS supervisor over the children's case, stated:

Yes. The grandmother indicated that she was not willing to care for the children long term. She wanted to be able to just be grandma, be able to have her grandmother role and visit with the children, have a relationship with the children. But, she did not want to have the sole responsibility of taking care of them long term.

Additionally, Respondent-father fails to contest Finding of Fact 65. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citation omitted) (stating findings of fact which remain unchallenged are also binding on appeal.); *see also In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). Finding of Fact 65 states:

[Grandmother] was no longer willing to remain as the placement provider for the children and the children were removed at her request. [Grandmother] remains unavailable to act as a placement for the children. [Respondent-father] does not have an appropriate alternative plan of care for the children and this is likely to continue for the foreseeable future.

As Respondent-father has failed to challenge Finding of Fact 65, it is therefore binding. This Finding, together with the evidence at trial, provides sufficient evidence to support the trial court's Finding of Fact 37 and therefore to conclude that Respondent-father did not have an appropriate childcare arrangement plan or the ability to care for the children. Accordingly, the trial court did not err in terminating his parental rights under N.C. Gen. Stat. § 7B-1111(a)(6).

B. Respondent-father's Criminal Charges

Respondent-father makes several contentions regarding his pending criminal charges in Massachusetts. Respondent-father asserts that he has a viable self-defense claim and expends considerable effort addressing the validity of his criminal allegations. Regardless of Respondent-father's contentions, the fact remains that he was incarcerated when his children came into the custody of WCHHS, remained incarcerated throughout the termination process, and at the time of the termination, did not have a trial date set as he faced felony charges for murder, robbery, and unlawful possession of a firearm.

Further, it is well established that "an adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citation omitted). Because the trial court did not err in terminating Respondent-father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(6), we decline to address Respondent-father's remaining contentions.

IN RE: A.H.F. & A.M.F.

Opinion of the Court

IV. Conclusion

For the aforementioned reasons, we hold that there was sufficient clear and cogent evidence to support a termination of Respondent-father's parental rights.

AFFIRMED.

Chief Judge STROUD and Judge WOOD concur.

Report per Rule 30(e).