

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-184

Filed 01 August 2023

Ashe County, Nos. 20 JT 30-32

IN THE MATTER OF: B.A.G., M.C.G., Jr., P.D.G.

Appeal by Respondent-Father from order entered 17 October 2022 by Judge Rebecca W. Blackmore in Ashe County District Court. Heard in the Court of Appeals 21 July 2023.

Paul W. Freeman, Jr., for Petitioner-Appellee Ashe County Department of Social Services.

Batch Poore & Williams PC, by Sydney J. Batch, for Respondent-Appellant father.

Jon Ward for guardian ad litem.

GRIFFIN, Judge.

Father appeals from the trial court's order terminating his parental rights to Paige, Max, and Ben.¹ Father argues the trial court erred in terminating his parental rights as there is insufficient evidence to support a conclusion that grounds exist for

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).

termination under N.C. Gen. Stat. § 7B-1111(a)(1). We hold there is sufficient evidence to support a conclusion that grounds exist for termination and affirm the trial court.

I. Factual and Procedural History

Father has three children—Paige, Max, and Ben. Ashe County Department of Social Services first became involved with the family in 2013. On 2 September 2020, DSS received its eleventh report concerning the family. This report alleged: substance use; the children were dirty; and there were animal feces on the floor of the home. DSS responded to the home and found: Max and Ben unattended, outside the home, without shoes; human feces, urine, and soiled diapers on the floor of the home; limited food supply; and drugs along with drug paraphernalia.

On 3 September 2020, the children were removed from the home and on 9 September 2020, DSS filed a petition alleging the children were neglected. Father entered a case plan on 28 September 2020, ordering him, among other things, to participate in psychiatric, psychological, or other treatment or counseling directed toward remediating and remedying the behaviors and conditions which led to the children's removal. On 23 October 2020, an adjudication hearing was held. All three children were adjudicated neglected. Father was arrested on drug-related charges in July 2021. Father was released in November 2021.

On 18 February 2022, DSS filed petitions to terminate the parental rights of Father to Paige, Max, and Ben. On 30 September 2022, the matter came on for

hearing and on 17 October 2022, the trial court entered an order terminating his parental rights. Father filed notice of appeal on 15 November 2022.

II. Standard of Review

We review a trial court's order terminating parental rights to determine "whether the findings of fact are supported by clear, cogent and convincing evidence and whether [the] findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 5 (2004). In making such a determination, we recognize that "[w]here there are sufficient findings of fact based on competent evidence to support the trial court's conclusions of law, the judgment will not be disturbed because of other erroneous findings which do not affect the conclusions." *Black Horse Run Prop. Owners Association-Raleigh, Inc. v. Kaleel*, 88 N.C. App. 83, 86, 362 S.E.2d 619, 621 (1987) (citations omitted); see also *In re Estate of Skinner*, 370 N.C. 126, 139–40, 804 S.E.2d 449, 458 (2017).

III. Analysis

Father argues the trial court erred in terminating his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) as there is insufficient evidence to support a conclusion that grounds for termination exist under § 7B-1111(a)(1). We disagree.

Under North Carolina General Statute, section 7B-1111(a)(1), the trial court may terminate a parent's parental rights upon finding "[t]he parent has abused or neglected the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1) (2021). A neglected juvenile is defined, in part, as one whose parent:

Opinion of the Court

- 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 . . . has refused to follow the recommendations of the Juvenile and Family Team[.]
- 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) (2021).

In cases where “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect.” *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citation omitted). For, if the petitioner was required to show the child is currently being neglected by the parent, termination of parental rights would be impossible. *In re Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 232 (1984). Thus, while the court may consider prior adjudications of neglect, it “must also consider evidence of changed conditions in light of the history of neglect by the parent, and the probability of a repetition of neglect.” *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001). Further, as noted by our Supreme Court in *In re S.R.F.*, “[a] parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” 376 N.C. 647, 658, 853 S.E.2d 415, 423 (2021) (internal marks and citations omitted).

Father contends the trial court erred in terminating his parental rights on the

basis of neglect as the trial court relied heavily on circumstances which no longer existed at the time of the termination hearing. As such, Father argues there is insufficient evidence to support the trial court's termination under N.C. Gen. Stat. § 7B-1111(a)(1). Father specifically challenges the trial court's Findings of Fact 19, 33, 50-53, and 57, together with Conclusion of Law 4.

Finding of Fact 19

Father takes issue with Finding of Fact 19 which states, in relevant part: "Neither parent was able to demonstrate much improvement prior to the filing of the petitions in these matters with the exception of establishing a clean residence." Father contends this Finding is not supported by competent evidence as he completed his parenting class and brought the children food and gifts on special occasions. Further, Father suggests he addressed any issues concerning his parenting prior to the children's removal before the termination hearing. However, a DSS case worker testified Father failed to complete any recommended individualized therapy noting Father only participated in peer support therapy and completed parenting classes after the petitions were filed. Moreover, while the case worker testified Father has become more cooperative since the filing of the petitions, she also suggested the problems surrounding visitation with the children have persisted. This evidence is sufficient to support the above Finding. As such, the trial court did not err.

Finding of Fact 33

Finding of Fact 33 states, in relevant part, "[Father] has not participated in

outpatient therapy.” Father contends this Finding is not supported by competent evidence as he was incarcerated for a period of five months during the relevant period and was therefore unable to attend the therapy. The case worker stated, at the termination hearing, Father was supposed to participate in individual outpatient therapy and had “attended a couple of sessions, but it wasn’t completed.” The above Finding is therefore erroneous as it indicates Father has not participated in outpatient therapy at all.

Finding of Fact 50

Finding of Fact 50 states: “The parents lack transportation, but do not have the financial ability to obtain transportation.” Father specifically stated he did not have transportation but used either public transportation or had help from his mother. Further, evidence presented at the hearing noted Father did not have a job and was denied disability; lived in HUD housing, was on food stamps, and was enrolled in Medicaid. Such evidence is sufficient to support the fact that Father did not have transportation or the ability, financially, to obtain transportation. As such, this Finding is supported by competent evidence and therefore the trial court did not err.

Finding of Fact 51

Finding of Fact 51 states:

Neither parent has developed a plan regarding how they would support and care for the children, if the children were to be returned to the parents. The only plan is to

Opinion of the Court

obtain [Medicaid], Food Stamps, and family support. This is not an adequate plan to provide proper care and supervision for the children in a safe home.

The only plan as to how Father planned to support and care for the children was reflected in his testimony at the hearing, where he stated his mom helps him, HUD pays his light bill, and he has food stamps and Medicaid. Thus, Finding of Fact 51 is supported by competent evidence.

Finding of Fact 52

The trial court found, in Finding of Fact 52, “[t]he parents do not have a plan for meeting the children’s educational needs or obtaining healthcare.” The record here offers no indication of Father’s plans for meeting the children’s educational needs. Moreover, as noted above, Father stated the children, if returned to his care would be on Medicaid. As such, Finding of Fact 52 is erroneous.

Finding of Fact 53

In Finding of Fact 53, the trial court found:

The parents have no plans regarding getting the children to therapy appointments nor obtaining immediate care should that become necessary.

Evidence was not offered concerning the transportation of the children to appointments. As such, Finding of Fact 53 is erroneous.

Finding of Fact 57

Father contends the portion of Finding of Fact 57 which states “they have not followed through with the recommendations to improve their mental health

Opinion of the Court

problems” is not supported by competent evidence as he has made extraordinary efforts to address his mental health and substance abuse issues. Nevertheless, Father was asked on nine separate occasions to submit to a drug test and only participated in seven of those—testing positive for marijuana, methamphetamine, or a combination of the two on five of the seven occasions. Additionally, despite Father’s participation in some recommended therapy, he failed to complete the individual outpatient therapy for his unspecified personality disorder. This evidence is sufficient to support Finding of Fact 57 and therefore the trial court did not err.

Conclusion of Law 4

The trial court’s Conclusion of Law 4 states, in relevant part:

[T]he [c]ourt has considered the parents’ progress in dealing with their substance abuse issues and maintaining a clean residence. The [c]ourt has also considered the children’s ongoing needs, the minimal contact the parents have had with the children for more than two years, the parent’s continuing struggle to meet their own needs, their lack of planning to meet the educational and therapeutic needs of the children, their lack of planning to meet the children’s healthcare needs, the parent’s continuing dependence on others to maintain a residence, their lack of transportation, and the parents’ unmet health needs.

Father contends the trial court erred in Conclusion of Law 4 arguing the Findings are not sufficient to support such a conclusion. However, the unchallenged Findings by the trial court reflect the children have been in DSS custody since 3 September 2020 and have never been returned to Father. Further, when placed in DSS custody, the children were, and still remain, developmentally and educationally delayed as

Opinion of the Court

the children were not in school. Moreover, Father is unable to work and was denied disability. As such, Father has not provided any financial support for the children. Additionally, Father was asked to submit to nine random drug screens. Father only submitted to seven of his nine tests and was positive for drugs on five of those occasions. Father has failed to complete several recommended therapies and all of his children express concern as to their having to be returned to him. Finally, Father has not expressed concern as to the children's welfare and well-being since removal aside from confirming visitation.

Thus, the challenged Findings above supported by competent evidence, together with the unchallenged Findings of Fact support this Conclusion of Law. Thus, the trial court did not err in Conclusion of Law 4.

IV. Conclusion

We hold the trial court did not err in terminating the parental rights of Father as there was sufficient evidence to support a conclusion that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(1).

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).