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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-805

Filed 2 April 2024

Durham County, No. 19 JT 68

IN THE MATTER OF: K.D.

Appeal by respondent-father from order entered 10 May 2023 by Judge Doretta Walker in District Court, Durham County. Heard in the Court of Appeals 6 March 2024.

Patrick Kuchyt, for appellee-petitioner Durham County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by C. Kyle Musgrove, for Guardian ad Litem.

Garron T. Michael for respondent-appellant father.

ARROWOOD, Judge.

Respondent-father (“father”) appeals, pursuant to N.C.G.S. §§ 7A-27(b)(2) and 7B-1001(a)(7), from the trial court’s order terminating his parental rights over his son, Kyle.¹ After careful review of the record and applicable law, we affirm.

¹ This pseudonym is used throughout the opinion to protect the identity of the juvenile.

I. Background

On 5 June 2019, Kyle was adjudicated as a dependent and neglected child and placed in the legal custody of the Durham County Department of Social Services (“DSS”). Kyle was placed with his maternal cousins L & B Clinton (“the Clintons”) in September 2019. Father moved from North Carolina to Connecticut in January 2021 and started a job with PepsiCo around the same time. Father left his job at PepsiCo in approximately January 2022 and returned to North Carolina later that year.

DSS filed a motion to terminate father’s parental rights on 13 September 2021.² The trial court conducted review hearings between October 2021 and May 2022 while the termination motion remained pending. In a 2 December 2021 review order, the trial court found that father had not engaged in any of the services ordered by the court since November 2020 and that it was not safe for Kyle to return to father’s home within the next six months due to safety issues and the “lack of consistency in engagement of services[.]”

In a 7 June 2022 review order, the trial court again found that it was not possible for Kyle to return to father’s home due to continued safety issues and lack of his engagement in services.³ The trial court also found that father was “currently

² The motion also sought termination of the biological mother’s parental rights.

³ Specifically, the trial court found that father had neither complied with the court’s orders nor engaged in a parenting program or any other services except for a recent substance abuse assessment.

paying child support” based on verification provided October 2021; however, the payment was around only “eleven dollars.”⁴

The adjudication portion of the termination hearing was held over four court dates: 16 November 2022, 26 January 2023, 23 February 2023, and 23 March 2023. When father testified on 16 November 2022, he stated that he was employed during all of 2021, working forty hours a week. Father further testified that he made at least \$25.00 per hour during that time. With respect to payments made by father for the care of Kyle between February and September 2021, the following exchange occurred between DSS and father:

DSS: Now, between approximately February of 2021 and September of 2021, did you provide any funds to the department to help support [Kyle]?

Father: To who?

DSS: To Durham DSS to help support [Kyle]?

Father: I gave funds to – well, I bought [Kyle] stuff, and if you’re referring to child support –

DSS: I’m not referring to child support specifically.

Father: Okay.

DSS: I’m asking have you provided any funds to

Additionally, it found that father had admitted to continued substance abuse and tested positive in April 2022.

⁴ The trial court’s finding with respect to child support was based on a court report for the 21 April 2022 permanency planning hearing.

Durham DSS to help support your child?

Father: I provided funds to the Clintons, and between those years that you are talking about, I have provided funds, but no, to answer your question, not directly to DSS.

DSS: Okay. Did you have a – was there any child support that you were ordered to pay?

Father: I believe so, but they are just taken out of my pay.

DSS: Okay. Was there a child support order in effect during that time period that I just requested, February 2021 to September 2021?

Father: I believe there was always something like that set up, so even before that time, that was – the child support thing was set up.

DSS: Okay. Do you know how much was taken out of your check?

Father: No, I don't even see that. It just goes – everything is electronic now.

DSS: All right. And you said you provided funds to the Clintons directly. What did you provide to the Clintons during that time period, February 2021 to September of 2021?

Father: Just bought him clothes, educational books, things of that nature. I have the receipts

On cross examination, father testified that he had been court-ordered to pay child

support since 2020 and that he consistently paid that support.

On 26 January 2023, Ms. Fantasia Edmonds (“Ms. Edmonds”), a DSS social worker involved in father’s case, testified that during the six-month period preceding the filing of the termination motion, DSS was paying a foster board rate of \$257.00 a month to Kyle’s placement providers. Ms. Edmonds also testified that father had maintained stable employment with only brief periods of unemployment. When asked whether father had provided any funds to support Kyle during the six-month period preceding the filing of the termination motion, Ms. Edmonds testified, “The only thing I know is that he – maybe one or two occasions, he provided some clothes and maybe books or a toy, something of that nature, but not funds.”

On cross examination, the following exchange occurred between father’s counsel and Ms. Edmonds:

Father’s counsel: Do you have any personal knowledge if [father] is under a child support order?

Ms. Edmonds: Yes.

Father’s counsel: And what information do you have?

Ms. Edmonds: That he was paying, I believe it was around \$50 from his check was being automatically drafted. I do know that he was also – the last time I checked in with the person who handled the child support case, he had some arrears.

Father’s counsel: And when was the last time you checked in on the child support case?

....

Ms. Edmonds: [W]e last spoke in November. She wanted an update on the case. In November, actually on November 9, 2022, she reported [father] is under order for \$50 a month. That was effective 8-1-2021. The last payment was posted on 11-8-2022, and there is an arrears balance of \$357.32.

On 23 March 2023, the trial court announced that DSS had met its burden for termination of father's parental rights on three separate grounds under N.C.G.S. § 7B-1111(a)(1)-(3) (2023). In a formal written order entered 10 May 2023, the trial court terminated father's parental rights on the grounds: (1) father did not pay a reasonable portion of Kyle's cost of care pursuant to N.C.G.S. § 7B-1111(a)(3); (2) father did not make reasonable progress in correcting the conditions that led to the child's removal pursuant to N.C.G.S. § 7B-1111(a)(2); and (3) there was a reasonable likelihood of neglect if Kyle returned to father pursuant to N.C.G.S. § 7B-1111(a)(1).

To support termination for failing to pay a reasonable portion of Kyle's reasonable cost of care, the trial court found:

76. The Father . . . has been employed or has admitted employment during the last six months preceding the filing of this motion and has had other income available. In the six months immediately preceding the filing of this motion, the Father has failed to pay a reasonable portion for the care and support of child despite having the physical and financial means to do so. The child has been in foster care in relative placement. Durham DSS has paid approximately

the following amounts in support of their foster care or kinship placements for the six months preceding the filing of this petition: \$257.00 per month.

77. [Father] was employed during the six-month time period immediately preceding the filing of the TPR motion, while he lived in Connecticut; however, he did not pay any financial support or child support during that period six months prior to the filing of the motion in this matter. [Father] did not start paying child support until approximately a year after the filing of the TPR motion after he moved back to North Carolina. The TPR motion was filed in September 2021. During the relevant time period, [Father] was earning at least \$25.00 per hour for 40 hours per week working for Pepsi.

The trial court's order terminated father's parental rights, and father gave notice of appeal on 7 June 2023.

II. Discussion

On appeal, father contends the trial court erred in concluding that a ground existed to terminate father's parental rights: (1) when its findings regarding reasonable progress were not properly supported by the evidence presented; (2) where the evidence failed to support a finding that there was a likelihood of future neglect; and (3) for a failure to pay a reasonable portion of the cost of care where its findings were unsupported by the evidence presented and the cost of care was incorrectly determined. Because only one ground is needed to terminate parental rights, we

address only father’s contention regarding the failure to pay a reasonable portion of the cost of Kyle’s care.⁵

A. Standard of Review

“We review a trial court’s adjudication under N.C.G.S. § 7B-1111 ‘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 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). Finding of facts supported by such evidence are considered conclusive on appeal even if the record contains contradictory evidence. *In re B.O.A.*, 372 N.C. 372, 379 (2019) (citing *In re Moore*, 306 N.C. 394, 403–04 (1982)). Unchallenged findings are considered binding on appeal. *In re B.E.*, 381 N.C. 726, 734 (2022) (citation omitted). “Moreover, we review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407 (2019) (citation omitted).

B. Failure to Pay a Reasonable Portion of the Cost of Care

Defendant contends that the trial court incorrectly determined a reasonable portion of the cost of care for Kyle and that its relevant findings are unsupported by the evidence. We disagree.

A trial court can terminate parental rights upon finding that

⁵ Although we only address the cost of care issue, we are not implying that the evidence was not also sufficient to establish termination on the other grounds found by the trial court.

[t]he juvenile has been placed in the custody of a county department of social services . . . , 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.G.S. § 7B-1111(a)(3). Cost of care “refers to the amount it costs the Department of Social Services to care for the child, namely, foster care.” *Montgomery*, 311 N.C. at 113.

A parent’s ability to pay is the controlling characteristic of what is a “reasonable portion” of cost of foster care for the child which the parent must pay. 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. What is within a parent’s “ability” to pay or what is within the “means” of a parent to pay is a difficult standard which requires great flexibility in its application.

In re Clark, 303 N.C. 592, 604 (1981).

With respect to the trial court’s findings, “[a] finding that a parent has ability to pay support is essential to termination for nonsupport on this ground.” *In re Ballard*, 311 N.C. 708, 716–17 (1984) (citation omitted). However, “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 N.X.A.*, 254 N.C. App. 670, 677 (2017) (cleaned up). Thus, “the only requirement is ‘that the trial court make specific findings that a parent was able to pay some amount greater than the amount the parent, in fact, paid during the relevant time period.’” *Id.* (quoting *In re Huff*, 140 N.C. App. 288, 293 (2000)).

Here, as father concedes in his brief, DSS filed a motion to terminate father's parental rights on 13 September 2021; thus, pursuant to N.C.G.S. § 7B-1111(a)(3), the relevant six-month period is from 13 March 2021 to 13 September 2021. Father testified that during this period, he was employed full-time at PepsiCo in Connecticut, and was working forty hours a week at an hourly rate of at least \$25.00. Thus, the trial court's finding that father had the ability to pay support for Kyle during the relevant period is fully supported by the evidence.

The trial court's finding that father failed to pay a reasonable portion for the care of Kyle during the relevant period—despite having the physical and financial means to do so—is also supported by clear and convincing evidence. Specifically, father testified that he provided no funds to DSS directly during the relevant period. Although father testified to providing “funds” to the Clintons for Kyle's support in the form of “clothes, educational books, things of that nature[,]” a trial court may, but is not required to only consider a parent's in-kind contribution as a form of support. *See In re M.C.*, 381 N.C. 832, 837 (2022) (“[The] sporadic provision of gifts, food, and clothing does not preclude a finding by the trial court that respondent-father failed to provide a reasonable portion of the cost of care”). Ms. Edmonds's testimony that—although father had maintained stable employment—he provided no funds to support Kyle during the relevant period further corroborates this finding.

Father contends that the valid child support order, which became effective 1 August 2021—approximately forty-four days before the end of the relevant period—

and required father to pay \$50.00 per month, represented a reasonable portion of the cost of care for Kyle. But father also testified that he did not know how much was taken from his check each month and provided no evidence that such payments were, in fact, made.⁶ Even assuming *arguendo* that father had paid the full \$50.00 in child support for the months of August and September 2021, that amount equates to less than ten percent of Kyle’s cost of care during the relevant period.⁷ And given that father was earning approximately \$4,000.00 per month before taxes at PepsiCo, the trial court found such payments, if any, were not sufficient financial support. *See In re B.S.O.*, 234 N.C. App. 706, 716–20 (2014) (concluding that a parent’s occasional small payments of \$10.00 or \$20.00 to their children could not be considered sufficient financial support under N.C.G.S. § 7A-1111(a)(3) when they were earning \$300.00 per weekend); *see also In re N.X.A.*, 254 N.C. App. at 677 (explaining that the trial court is only required to make specific findings “that a parent was able to pay some amount greater than the amount the parent, in fact, paid during the relevant period.”).⁸

⁶ Although just outside the relevant period, we find it instructive that the child support payment father made in October 2021 was around only eleven dollars.

⁷ Ms. Edmonds testified that DSS was paying a foster board rate of \$257.00 a month to Kyle’s placement providers. This amount constitutes Kyle’s “cost of care” pursuant to N.C.G.S. § 7B-1111(a)(3). *See Montgomery*, 311 N.C. at 113.

⁸ We note that father testified to paying child support as early as 2020; however, father’s brief never referred to payments that were based on a child support order preceding the 1 August 2021 order, nor was there any evidence in the record alleging (1) what the payment amounts were, (2) what months the payments occurred, or (3) what child support order they were based upon.

We note that, in Finding of Fact 77, the trial court states father did “not start paying child support until approximately a year after the filing of the TPR motion” This finding is incorrect and stricken, given that father had a child support order effective 1 August 2021 and that at least one or more payments had been made by October 2021. However, as discussed above, the trial court’s remaining findings are sufficient to support father’s termination of parental rights pursuant to § 7A-1111(a)(3). *See In re J.T.C.*, 273 N.C. App. 66, 68 (2020) (stating that “erroneous findings unnecessary to the determination do not constitute reversible error where the trial court’s remaining findings independently supports its conclusions of law.” (cleaned up)).

The trial court’s findings thus support its conclusion that grounds existed under N.C.G.S. § 7B-1111(a)(3) to terminate father’s parental rights. And because “an adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights[.]” it is unnecessary and we decline to address father’s arguments challenging the trial court’s other grounds for termination. *In re E.H.P.*, 372 N.C. at 395. Accordingly, we affirm the trial court’s 10 May 2023 order.

III. Conclusion

For the foregoing reasons, the trial court’s order is affirmed.

AFFIRMED.

Judge TYSON concurs.

Judge COLLINS concurs in result only.

IN RE: K.D.

Opinion of the Court

Report per Rule 30(e).