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NO. COA10-379

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

IN THE MATTER OF:

D.W.

Orange County
No. 06 JT 60

Appeal by respondent from order entered 21 January 2010 by Judge Joseph Moody Buckner in Orange County District Court. Heard in the Court of Appeals 16 August 2010.

Northen Blue, L.L.P., by Carol J. Holcomb and Samantha H. Cabe, for petitioner-appellee.

Rebekah W. Davis for respondent-appellant.

Deana K. Fleming, Associate Counsel, N.C. Administrative Office of the Courts, for guardian ad litem.

GEER, Judge.

Respondent mother appeals from an order of the district court terminating her parental rights as to the minor child D.W. ("Danielle").¹ We hold that the trial court's findings of fact, supported by sufficient evidence, support its conclusion of law that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(6) (2009) (dependency) to terminate respondent mother's parental rights. Because respondent mother has not further challenged the trial

¹The pseudonym "Danielle" is used throughout this opinion to protect the minor's privacy and for ease of reading. Respondent father is not a party to this appeal.

court's decision that termination is in Danielle's best interests, we affirm.

Facts

On 5 April 2006, the Orange County Department of Social Services ("DSS") filed a juvenile petition alleging that Danielle, who was born in December 2002, was a neglected and dependent juvenile. DSS alleged that respondent mother and respondent father had a history with Child Protective Services due to past drug abuse and domestic violence; that respondent mother was actively using cocaine and was currently homeless; that respondent father was living with his mother and adult siblings in a home where drugs were used; that respondent mother was seeking drug treatment; and that respondent mother consented to the nonsecure custody of Danielle. The court granted nonsecure custody of Danielle to DSS. Subsequently, by a consent order filed 13 April 2006, the court adjudicated Danielle dependent based upon the stipulation of respondent parents. DSS placed Danielle in a foster home.

In a review order filed 11 August 2006, the trial court changed the permanent plan for Danielle to guardianship with "Mr. and Mrs. Brown," relatives of respondent mother.² The court found that respondent parents, who "have struggled with substance abuse for many years," "decided not to work toward reunification with the juvenile, but would like to have [Mrs. Brown] obtain custody of the juvenile so that she does not remain in foster care any longer."

²The pseudonyms "Mr. and Mrs. Brown" are also used throughout this opinion to protect Danielle's privacy and for ease of reading.

In a permanency planning order filed 3 October 2006, the court granted guardianship to Mr. and Mrs. Brown and closed the case.

Danielle lived with Mr. and Mrs. Brown until their deaths in 2008. Mr. Brown died in January 2008, and, shortly afterwards, Mrs. Brown was hospitalized with terminal cancer. Following Mrs. Brown's death in May 2008, DSS filed a juvenile petition alleging that Danielle was a neglected and dependent juvenile. DSS took nonsecure custody of Danielle on 23 May 2008 and placed Danielle in her previous foster home. On 5 June 2008, the trial court held a hearing at which respondent parents again consented to an adjudication of dependency. The trial court entered an order on 5 August 2008 adjudicating Danielle a dependent juvenile.

A review hearing was held on 7 August 2008. In its review order, the trial court found that both respondent mother and respondent father had tested positive for crack cocaine in June 2008, that custody with a relative was not an option, and that DSS had made reasonable efforts to avoid or eliminate the need for placement. The trial court then ordered that DSS be relieved of making reunification efforts with respondents.

After holding a permanency planning hearing on 16 October 2008, the trial court found that it was not possible for Danielle to be returned to the custody of her parents in the immediate future or within six months. The court found that respondent parents had considered relinquishing their parental rights due to their inability to parent Danielle; the parents had suffered from addiction to crack cocaine for many years; they had been very

inconsistent with their contact with Danielle; and neither one had parented her for any length of time. The trial court also found that respondent mother had attempted drug addiction recovery on several occasions without success. The trial court further found that efforts to reunify or place Danielle with respondent parents would be futile or inconsistent with the best interests of Danielle, who needs a "stable, nurturing caretaker free of abusing substances" The court ordered that the permanent plan for Danielle be changed to adoption, directed DSS to proceed with terminating respondent parents' parental rights, and ceased visitation for respondent parents.

Respondent mother filed a motion for visitation on 6 January 2009. In her motion, respondent mother alleged that she was living at Oxford House in Chapel Hill, attending Horizons Substance Abuse Comprehensive Outpatient Treatment program daily, attending Narcotics Anonymous meetings, participating in Family Treatment Court, and had had negative drug screens since September 2008. The trial court denied the motion on 20 April 2009.

The trial court held another permanency planning hearing on 16 April 2009. In its order, the court found that respondent mother was in recovery and was actively participating in Family Treatment Court. The court further found, however, that although respondent mother had made progress, there were questions regarding her ability to provide for Danielle. The court found that respondent father had made no effort toward reunification. The court further found that Danielle should remain in the current placement with her

foster family because she "is currently in a very safe, stable, loving and nurturing home with a caretaker who is willing and able to adopt her to provide the love and care that [she] needs."

On 22 April 2009, DSS filed a motion to terminate the parental rights of respondent mother. The motion alleged that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(1) in that respondent mother had neglected Danielle and under N.C. Gen. Stat. § 7B-1111(a)(6) in that respondent mother was incapable of providing care and supervision for Danielle such that Danielle was a dependent juvenile.

The court conducted hearings on the motion to terminate respondent mother's parental rights on 4 November 2009 and 7 December 2009. On 21 January 2010, the court entered an order terminating respondent mother's parental rights, finding that the grounds of both neglect and dependency existed and that it was in Danielle's best interests to terminate respondent mother's parental rights. Respondent mother timely appealed from that order to this Court.

Discussion

A termination of parental rights proceeding involves two separate phases: an adjudicatory stage and a dispositional stage. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudicatory stage, "the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist." *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). This

Court determines on appeal whether "the court's findings of fact are based upon clear, cogent and convincing evidence and [whether] the findings support the conclusions of law." *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996). Factual findings that are supported by the evidence are binding on appeal, even though there may be evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 321 (1988). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Respondent mother contends that the trial court erred in the adjudicatory stage by concluding that grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and § 7B-1111(a)(6) (dependency). We first address N.C. Gen. Stat. § 7B-1111(a)(6). Under N.C. Gen. Stat. § 7B-1111(a)(6), the trial court may terminate parental rights upon finding:

[T]he 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 such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9) (2009) in turn defines a dependent juvenile as one "in need of assistance or placement because the

juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement."

This Court has held that in determining whether a juvenile is dependent, "the trial court 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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). "Findings of fact addressing both prongs must be made before a juvenile may be adjudicated as dependent, and the court's failure to make these findings will result in reversal of the court." *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007).

As to the first prong, respondent mother argues that in making its decision as to adjudication, the court improperly considered evidence relevant only to disposition. Specifically, respondent mother contends that the findings of fact related to Danielle's needs could not support an adjudication of dependency because "considering what is best for [Danielle's] mental health is not a consideration for adjudication."

In *In re J.D.L.*, ___ N.C. App. ___, ___, 681 S.E.2d 485, 491 (2009), however, the Court held otherwise, concluding that findings that the juvenile "has several special needs, including speech and hearing issues" and that the respondent "'still fails to show the Court the ability to properly parent the minor child and attend to his special needs'" supported an adjudication of dependency. In

this case, the trial court made several findings as to Danielle's behavioral problems and special needs. Among them, the court found that Danielle suffers from an anxiety disorder and depression; that Danielle had suffered loss with the death of Mr. and Mrs. Brown, had suffered the loss of her parents, and "continues to grieve her losses"; that Danielle has had tantrums and meltdowns during the past year and acts out if she does not get her way; and that Danielle "still has problems which need to be addressed in therapy and through skilled, consistent parenting." In accordance with *In re J.D.L.*, we conclude that these findings were relevant to the court's assessment of whether respondent mother is capable of providing for the proper care and supervision of Danielle. Because respondent mother has not challenged the sufficiency of the evidence to support these findings, they are binding.

The trial court also found in finding of fact 35 that Danielle "has significant behavioral and attachment problems." Although respondent mother makes a general challenge to finding of fact 35 as being unsupported, ample testimony supports this portion of the finding. Both Danielle's therapist and social worker commented that Danielle will "always" have issues with attachment. The therapist described Danielle's attachment issues as being "major" and "substantial," such that Danielle requires "exceptional," "very specialized" parenting.

Dr. April Harris-Britt, a psychologist who evaluated Danielle, further testified about Danielle's "abnormal" and "atypical" behaviors including bed wetting; cutting clothing; chewing on

computer cords; biting; picking at hair, nails, and clothing; and talking to herself. She characterized Danielle as being aggressive, with "mild to moderate levels of maladjustment," and as displaying anxiety, withdrawal, attention problems, and somatic concerns. In addition, the therapist described an incident in January 2009, after respondent parents visited Danielle, in which Danielle caused trouble at school by teasing, screaming, throwing shoes at a teacher, and pulling a fire alarm. Danielle also threatened to stab someone the following weekend. The therapist cited this behavior as one of "many instances" of a regression in Danielle's ability to modulate her behavior following a distressing event that "re-triggered earlier traumas."

With these findings about Danielle's needs in mind, we turn to the trial court's findings about respondent mother's ability to care for or supervise this juvenile and the likelihood that this inability will continue in the future. The trial court found that respondent mother has a 20-year pattern of chronic drug use, recovery, and relapse and that throughout this history, she has been unwilling or unable to consistently parent any of her seven children. Respondent mother contends, however, that this finding minimizes the progress she has made.

We must reject this argument, and others like it, because it disregards the applicable standard of review and essentially asks this Court to give added weight to the evidence favorable to respondent mother. See *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397-98 (1996) (explaining that because trial court,

as trier of fact, assigns weight to and resolves conflicts in evidence, "[i]f there is competent evidence to support the trial court's findings of fact and conclusions of law, the same are binding on appeal even in the presence of evidence to the contrary"). Since respondent mother makes no other challenge as to this finding, it is binding. Further, with regard to her seven children, respondent mother does not challenge the trial court's finding that she "has histories with child protective services in three different counties" and that all of her children have been removed from her custody and placed in foster care or with relatives.

As to her present capabilities, respondent mother challenges finding of fact 35: "Due to her lack of parenting and based upon the observations of witnesses testifying before this court at this hearing, Respondent mother lacks parenting skills sufficient to parent [Danielle,] who has significant behavioral and attachment problems." Respondent mother contends that the evidence shows she does have the necessary skills to parent Danielle. Although there is evidence that respondent mother is making efforts to improve her parenting skills, our review of the record also shows that respondent mother has not been trained in attachment-based parenting. Danielle's therapist and Dr. Harris-Britt emphasized that, given Danielle's substantial attachment issues, Danielle needs attachment-based parenting, which involves "very nurturing and yet very structured parenting."

Respondent mother also challenges the court's finding that respondent mother's testimony that "all [Danielle] needs in order to correct her psychological, emotional and behavioral problems is to come home, shows poor insight and a profound lack of understanding of the needs of her daughter." Respondent mother claims that this finding "patronizes" her and argues that she never stated that bringing Danielle home would solve her problems, but only said that Danielle wants to know and be part of her family. At the hearing, respondent mother testified:

They are building [Danielle] with a lot of resentment. If she's acting out like they're saying she's acting, [Danielle] didn't act out like that. It's something missing in this picture. She wants to see her mother and I'm sure she's asking for her two brothers, which she's bonded with. And if she's acting out like this, can't they see that she wants to see me and her siblings? I mean I can't understand and I'm sure she can't understand, that's why she's so confused. I mean I -- I just can't understand it.

This testimony, especially when viewed alongside the explanations given by Dr. Harris-Britt, the therapist, and the social worker for Danielle's behavioral and attachment problems, supports the trial court's finding.

In addition, to the extent respondent mother insists in her appellate brief that if she "does not understand the complexity of the problem, it is not her fault" because she has not been able to visit Danielle, respondent mother demonstrates a failure to appreciate her role in causing Danielle's attachment issues. Dr. Harris-Britt explained at the hearing that insecure attachment typically develops when a child is deprived, especially in the

first three years of life, of "a secure base, where they feel secure, they feel safe, they feel as though they receive responsive sensitive care giving." She went on to attribute Danielle's attachment issues to the "history of unstable, unpredictable situations that have happened in her life."

Turning toward the question whether respondent mother's incapability is likely to continue, we note initially that the trial court found respondent mother "has maintained a relationship with Respondent father, an active drug user." Respondent mother does not challenge the sufficiency of the evidence to support this finding. She does, however, challenge finding of fact 30, in which the court found the relationship between respondent parents "significant" because respondent father "is a known drug addict and active user" who "has been a bad influence on Respondent mother's attempts at recovery and continues to threaten her recovery"; and, in addition, respondent mother's "*continued relationship* with [respondent father] creates an environment injurious to [Danielle's] welfare." (Emphasis added.) Respondent mother's only specific challenge to this finding misstates the finding: she asserts that the evidence does not support a finding that "he [respondent father] creates an injurious environment" for Danielle. (Emphasis added.)

In any event, the evidence does support the finding that respondent mother and respondent father's *continued relationship* is harmful to Danielle. Several witnesses testified about respondent mother's history with respondent father, noting that they have

"been in active drug addiction together" and have an "unstable," "on again, off again relationship." The relationship had been "problematic" for respondent mother in her past recovery attempts. She has tried to leave respondent father, but "he'll come back into her life" and will be a "trigger" for her to relapse. Recently, respondent mother "won't leave [respondent father] alone," and they were even spotted kissing outside the trial court within the year preceding the termination hearing.

The evidence further shows that the relationship with respondent father places respondent mother at risk for relapse, even though she has been sober for over a year. Jan Laughinghouse, the clinical director of Mary's House, the residential substance abuse treatment facility where respondent mother was treated in 2004-2005, testified that many patients have "relapse patterns," and a relationship between respondent parents "would be a red flag That's huge, because people who use drugs and people who don't use drugs don't hang around each other. They have a saying in the program if you keep going to the barbershop, you're going to get a haircut. So, eventually those things are going to happen." Danielle's social worker also observed that although respondent mother has remained sober for over a year now, "she has been clean before for a year with a large amount of supports in place, and she still relapsed." Therefore, the trial court's finding that respondent father is an ongoing threat to respondent mother's recovery is supported.

Finally, the evidence shows that when respondent mother was using drugs and was involved with respondent father in the past, she did not display the parenting qualities or skills necessary to meet Danielle's needs.³ When respondent mother was treated at Mary's House, she had unrealistic expectations for Danielle's behavior, an attitude common to substance abusers, and did not positively discipline Danielle. She also exhibited narcissistic features, had "difficulty in being empathic and connected with others," isolated herself from others, and showed "minimal warmth" to Danielle. According to Laughinghouse, these traits "fit[] the classic profile of a narcissistic where they are at the nexus of their own universe."

This portrayal of respondent mother's behavior while in substance abuse treatment at Mary's House sharply contrasts with Dr. Harris-Britt's description of the parent Danielle needs: a caregiver who shows affection, is nurturing, is consistent in discipline, showing "sensitivity, warmth, emotional availability," exhibiting minimal hostility, and being child-focused and "able to emotionally coach a child." This evidence further supports the

³We are not persuaded by respondent mother's argument that any evidence or findings related to her addiction and treatment in 2004-2005 cannot support the current adjudication. The evidence of respondent mother's behavior in this time frame is relevant to understanding the future risk to Danielle. See *In re V.L.B.*, 168 N.C. App. 679, 685, 608 S.E.2d 787, 791 (holding that trial court did not err in considering year-old psychological evaluations in assessing severity and chronic nature of respondents' mental health conditions and "concluding, based on respondents' history, that they did not have the ability to provide a safe and appropriate home for the minor child"), *disc. review denied*, 359 N.C. 633, 614 S.E.2d 924 (2005).

trial court's determination that respondent mother lacks the capability of parenting Danielle even when in recovery. While she may now be parenting two older sons, the evidence did not suggest that the two boys had similar special needs with respect to parenting.

In view of this evidence, we also conclude that finding of fact 47, also challenged, is supported. Finding of fact 47 states that respondent mother has not remedied the conditions that led to Danielle's removal from her custody and that "impairment of the juvenile will repeat and/or continue if the juvenile were returned to the care and custody of her parent." Respondent mother does not challenge the finding that Danielle was removed because of respondent mother's drug addiction, at which time respondent mother was "admittedly unable to take care of" Danielle.

While respondent mother's progress in addressing her substance abuse problem is commendable, the above findings of fact – which focus on (1) Danielle's special needs, (2) respondent mother's inability to care for and supervise Danielle given those needs, and (3) the risk of relapse and related consequences to Danielle, given respondent mother's choice to continue a relationship with respondent father – are more than sufficient to satisfy the first prong of the dependency analysis. See *In re A.H.*, 183 N.C. App. 609, 616, 644 S.E.2d 635, 639 (2007) (holding that when respondent did not dispute she previously lacked capacity to care for daughter, but contended her conduct over seven months immediately prior to termination hearing established she no longer was

incapable of parenting her daughter, "trial court was entitled to find, based on the three-year history of relapses, that there was a reasonable probability that the incapacity resulting from respondent's very serious substance abuse disorder would continue in the future[]").

As to the second prong of the court's dependency determination, respondent mother does not challenge the court's finding that respondent mother "lacks an appropriate alternative child-care arrangement." We, therefore, conclude that the trial court's findings, which were supported by clear, cogent, and convincing evidence, support its determination that Danielle is a dependent juvenile. Accordingly, the trial court did not err in finding that grounds existed to terminate respondent mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(6).

Because we hold that the trial court properly found a sufficient basis for termination of parental rights under § 7B-1111(a)(6), we need not address respondent mother's arguments as to § 7B-1111(a)(1). *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93-94 (2004) ("Having concluded that at least one ground for termination of parental rights existed, we need not address the additional ground of neglect found by the trial court."). Since respondent mother has not challenged the dispositional ruling that termination of her parental rights was in the best interests of Danielle, we affirm the trial court's order terminating respondent mother's parental rights.

Affirmed.

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Judges MCGEE and BRYANT concur.

Report per Rule 30(e).