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NO. COA11-410  
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

IN THE MATTER OF:

M.S.	Wake County
	No. 10 JT 22
Respondent-Appellant	
Father of the Juvenile	

Appeal by respondent from order entered 16 December 2010 by Judge James Fullwood in Wake County District Court. Heard in the Court of Appeals 10 October 2011.

*Hairston Lane Brannon, PA, by James E. Hairston, Jr., and Robert J. Lane III, for petitioner-appellee custodians.*

*Mercedes O. Chut for respondent-appellant father.*

ELMORE, Judge.

Respondent appeals an order terminating his parental rights as father of the minor child M.S. on the grounds of 1) neglect, 2) willful abandonment, and 3) failure to legitimate or establish paternity of the child. He challenges each ground as being unsupported by the evidence or findings of fact, and he also challenges the trial court's determination that termination

of his parental rights is in the best interests of the child. We reverse and remand.

**I. Background**

M.S. was born in 2005. Approximately when she was five months old, respondent was incarcerated. Respondent remains incarcerated, with an estimated release date of 8 May 2014. In March 2009, Wake County Child Protective Services (CPS) received a report regarding neglect by the child's mother due to physical abuse and emotional issues. At that time, the minor child had been cared for by S.H., a relative of the child, and S.H.'s husband J.K. (together, the custodians), since the child was about one-year-old. On 19 March 2009, the custodians received legal custody of the minor child by entry of an *ex parte* emergency custody order. A temporary custody order was then entered on 28 May 2009, and a permanent custody order was entered on 16 October 2009.

After custody was granted to the custodians, CPS contacted respondent in late 2009 to inform him about the change in custody and to give him the contact information for the custodians. The record indicates that the child's mother was inconsistent about the identity of the child's father, but at some point S.H. obtained information that allowed CPS to contact

respondent. Respondent thereafter sent a letter with pictures to CPS for the minor child, and contacted the custodians by phone on three occasions. Although CPS investigated the allegation of neglect and set up a safety plan for the child's mother, no juvenile case was ever filed in the court, and CPS ended its involvement with the family in April 2010 due to lack of cooperation by the mother.

On 30 August 2010, the child's custodians filed a petition to terminate both parents' rights to the minor child. The grounds alleged in the petition as to respondent are: 1) neglect, N.C. Gen. Stat. § 7B-1111(a)(1) (2009); 2) failure to legitimate or establish paternity of the child, N.C. Gen. Stat. § 7B-1111(a)(5) (2009); and 3) willful abandonment, N.C. Gen. Stat. § 7B-1111(a)(7) (2009).

The matter was heard on 7 December 2010. After the presentation of evidence, the trial court concluded that all three grounds existed to terminate respondent's parental rights. The trial court then concluded that termination of respondent's parental rights was in the best interests of the minor child, and ordered that respondent's parental rights be terminated. Respondent now appeals.

**II. Standard of Review**

Upon review of an order terminating parental rights, this Court must determine 1) whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and 2) whether the court's findings of fact support its conclusions of law that one or more statutory grounds for termination exist. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 374, 547 S.E.2d 9, 10 (2001). Once a trial court has determined at the adjudication phase that at least one ground for termination exists, the case moves to the disposition phase where the trial court decides whether termination of parental rights is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2009); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001).

### III. Analysis

Respondent first argues that that the trial court failed to make adequate findings of fact to support any of the grounds for termination. We agree.

At the adjudication portion of a hearing to terminate parental rights, the trial court must "take evidence, find the facts, and . . . adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111, which authorizes

the termination of parental rights of the respondent." N.C. Gen. Stat. § 7B-1109(e) (2009). Rule 52(a) of the North Carolina Rules of Civil Procedure requires three separate and distinct acts by the trial court: "(1) find the facts specially, (2) state separately the conclusions of law resulting from the facts so found, and (3) direct the entry of the appropriate judgment." *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982).

[W]hile Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached.

*In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (citation omitted) (emphasis in original). Furthermore, "the trial court's factual findings must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence." *Id.* (quotations and citation omitted). "Ultimate facts are the final resulting effect reached by processes of logical reasoning

from the evidentiary facts.” *Id.* (quotations and citation omitted).

Here, most of the trial court’s findings of fact are nearly identical recitations of the petition allegations. Of the fourteen findings of fact listed as supporting the ground of neglect in the termination order, seven have the exact same wording as allegations in the petition. Six others are almost identical, but with minor changes that do not substantially affect the content of the finding (e.g., several of the petition allegations begin with the phrase “[u]pon information and belief”; this phrase does not appear in the termination order).

The findings pertaining to the other two grounds for termination similarly lack sufficient indicia of the trial court’s independent determination of the facts. The four findings relating to the ground of failure to legitimate the child are exact copies of the four allegations listed in the petition. In addition, these findings also only merely recite nearly word for word the statutory language contained in N.C. Gen. Stat. § 7B-1111(a)(5) (2009). Furthermore, four of the eight findings relating to the ground of willful abandonment are exact replicas of allegations in the petition. The remaining

findings have small changes from the allegations in the petition but are substantially the same.

Moreover, we note that many of the findings are merely conclusions of law, or are hybrids consisting of part fact, part conclusion. Even the factual portions of the findings fail to reflect actual facts derived from the evidence presented at the hearing. For example, the trial court found that "Respondent has had the means and ability to communicate with the minor child since his incarceration on or about August 2005, and has willfully failed and refused to do so." While the portion of the statement regarding respondent's lack of communication may be true based on the court's evaluation of the evidence, the court did not include any details which would support the finding that respondent's failure to communicate was willful.

Therefore, we conclude that the trial court's findings are to a large degree merely recitations of the allegations contained in the petition and fail to show that facts exist to support the grounds for termination of respondent's parental rights. Thus, the trial court has failed to make "specific findings of the ultimate facts" which are necessary for this Court to review whether "the judgment is adequately supported by competent evidence." *Anderson*, 151 N.C. App. at 97, 564 S.E.2d

at 602. We reverse the order of the trial court terminating respondent's parental rights and remand for further proceedings. Accordingly, we decline to consider whether sufficient evidence was presented at the hearing from which the trial court could have made sufficient findings of fact. We leave to the trial court's discretion the decision whether to accept new evidence upon remand.

Reversed and remanded.

Judges BRYANT and ERVIN concur.

Report per Rule 30(e).