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NO. COA11-774  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

IN THE MATTER OF:

J.S.K. and C.D.K.

Forsyth County  
Nos. 10 JT 255-56

Appeal by respondent-father from orders entered 4 April 2011 by Judge Laurie Hutchins in Forsyth County District Court. Heard in the Court of Appeals 21 November 2011.

*Jerry D. Jordan for petitioner-appellee mother.*

*Sydney Batch for respondent-appellant father.*

HUNTER, JR., Robert N., Judge.

Respondent-father appeals the trial court's orders terminating his parental rights to the minor children, J.S.K. and C.D.K. After careful review, we reverse and remand for further proceedings not inconsistent with this opinion.

On 10 November 2010, petitioner-mother filed petitions to terminate respondent-father's parental rights. The petitions alleged grounds existed to terminate respondent-father's

parental rights on the basis of willful abandonment, willful failure to pay for the care and support of the children, and dependency.

The matter came on for hearing on 7 March 2011. The trial court found grounds existed to terminate respondent-father's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(4), (a)(6), and (a)(7). Respondent-father appeals.

Respondent-father argues the trial court erred when it found as fact and concluded as a matter of law that grounds exist to terminate his parental rights. Here, the trial court found:

10. Pursuant to N.C.G.S. § 7B-1111 and the North Carolina General Statutes, grounds exist to terminate the parental rights of the minor child's biological father, [D.J.K.]

In addition, the Court finds by clear, cogent, and convincing evidence, the following:

- a. Petitioner was awarded custody of the minor child by judicial decree and Respondent father, has for a period of one year or more next preceding the filing of the Petition, willfully failed without justification to pay for the care and support of the minor child.
- b. The Respondent father is incapable of providing for the proper care and supervision of the minor child and there is a reasonable probability that such

incapability will continue for the foreseeable future.

- c. The Respondent father willfully abandoned the minor child for at least six (6) consecutive months immediately preceding the filing of [the] Petition.

In conclusion of law 3, the trial court determined "by clear and cogent evidence statutory grounds to terminate Respondent father's parental rights, pursuant to N.C.G.S. §7B-1111(a)(4), N.C.G.S. §7B-1111(a)(6), and N.C.G.S. §7B-1111(a)(7)." Respondent-father argues finding of fact 10 and conclusion of law 3 are not supported by competent evidence.

"The 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). "'In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.'" *In re Anderson*, 151 N.C. App. 94, 96, 564 S.E.2d 599, 601 (2002) (quoting N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2001)). "[T]he 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.* at 97, 564 S.E.2d at 602 (citation omitted). "'Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts.'" *Id.* (citation omitted).

"A 'conclusion of law' is the court's statement of the law which is determinative of the matter at issue between the parties." *Montgomery v. Montgomery*, 32 N.C. App. 154, 157, 231 S.E.2d 26, 28-29 (1977). Here, we conclude finding of fact 10 is more appropriately classified as a conclusion of law. When a finding of fact is essentially a conclusion of law, it is reviewable on appeal as a conclusion of law. *In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004), *disc. review denied*, 359 N.C. 321, 611 S.E.2d 413 (2005).

In this case, the trial court's findings are to a large degree merely recitations of the allegations set forth in the petition and fail to show that facts exist to support the grounds for termination of respondent-father'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-father'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 STEELMAN and GEER concur.

Report per Rule 30(e).