IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1320

Filed: 1 August 2017

Watauga County, No. 14 JT 61

IN THE MATTER OF: E.R.

Appeal by respondent from order entered 18 August 2016 by Judge Hal G. Harrison in Watauga County District Court. Heard in the Court of Appeals 13 July 2017.

Di Santi Watson Capua Wilson & Garrett, PLLC, by Chelsea Bell Garrett, for Watauga County Department of Social Services, petitioner-appellee.

David A. Perez for respondent-appellant.

Poyner Spruill LLP, by Daniel G. Cahill, for guardian ad litem.

TYSON, Judge.

Respondent-father appeals from an order terminating his parental rights to E.R., ("Elizabeth") born May 2014. We affirm the order.

I. Factual and Procedural Background

On 16 December 2014, Watauga County Department of Social Services ("DSS") filed a juvenile petition, which alleged Elizabeth was a neglected and dependent juvenile. The petition identified Respondent as the child's putative father. At a

hearing on 26 January 2015, the court adjudicated Elizabeth as a neglected and dependent juvenile. In its order, the court found the child's father had not been located. The order indicated Respondent father lived in Tennessee and had no involvement with Elizabeth.

DSS ultimately located Respondent living in Mountain City, Tennessee, and Respondent underwent DNA testing on 20 August 2015 which established his paternity of Elizabeth. On 19 October 2015, the court conducted an adjudication and disposition hearing concerning Respondent, who had been served with notice, but was not present, was represented by counsel at the hearing. The court continued custody with DSS under a permanent plan of adoption.

Elizabeth's mother relinquished her parental rights to Elizabeth, and on 1 April 2016, DSS filed a motion to terminate Respondent's parental rights on the grounds: (1) he neglected the juvenile, N.C. Gen. Stat. § 7B-1111(a)(1) (2015); (2) he failed to pay a reasonable portion of the cost of her care for a continuous period of six months preceding the filing of the motion to terminate rights, N.C. Gen. Stat. § 7B-1111(a)(3); and (3) he is incapable of providing for the proper care and supervision of the juvenile such that she is a dependent juvenile, N.C. Gen. Stat. § 7B-1111(a)(6). Respondent was served with the motion, was present at the hearing and was represented by counsel.

The court determined DSS had met its burden of proof by clear, cogent and convincing evidence. The court concluded termination of Respondent-father's parental rights was in the child's best interest and terminated his parental rights. Respondent appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7B-1001(a)(5) (2015).

III. Issues

Respondent asserts the trial court erred by concluding grounds existed to terminate his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(3) and (a)(6).

IV. Standard of Review

> On appeal, our standard of review for the termination of parental rights is whether the trial court's findings of fact are based on clear, cogent and convincing evidence and whether the findings support the conclusions of law
>
> The trial court's conclusions of law are reviewable *de novo* on appeal.

In re J.S.L., 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citations and internal quotation marks omitted).

V. Analysis

A. Findings of Fact

Respondent contends the court's conclusion that he neglected Elizabeth is not supported by proper findings of fact based upon clear, cogent and convincing evidence. He argues the findings of fact do not establish he was neglecting the child at the time of the termination hearing. He submits that several of the findings of fact are not correct.

Respondent cites as incorrect the portion of finding of fact number seven in which the court found that Respondent had stated one address as his current address, but testified at the hearing that the address given was an old address. He also asserts the portion of finding of fact 12(a) quoted above is partly erroneous in that it states he went to Ms. Jones' home with the child's mother when the evidence did not show he went to Ms. Jones' home, but showed he went to another location with the mother to deliver items for the child. Respondent argues that findings of fact 12(d)-(e) and (g)-(i) are incorrect because they implied he knew DSS had custody of Elizabeth and he needed to contact DSS, but negligently failed to make the effort or take sufficient action.

He also argues the evidence showed he did not know that DSS had custody of Elizabeth until initiation of the termination of parental rights proceeding in April 2016. Respondent argues finding of fact 12(m) is erroneous because there is no competent evidence to establish that he allowed Elizabeth to reside in an environment injurious to her welfare.

"[I]t is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). The appellate court "cannot reweigh the evidence or credibility as determined by the trial court." *In re P.A.,* 241 N.C. App. 53, 57, 772 S.E.2d 240, 244 (2015). If the findings of fact made by the trial court "are supported by [the required quantum of] evidence, they 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, 320 (1988). Unchallenged findings of fact "are deemed to be supported by sufficient evidence and are binding on appeal." *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). If some findings are incorrect, an adjudication order may still be affirmed, if ample other findings support the court's ultimate adjudication. *See In re T.M.,* 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

B. Determination of Neglect

A juvenile is neglected if she does not receive proper care, supervision or discipline from her parent, has been abandoned, is not provided necessary medical or remedial care, or lives in an environment injurious to her welfare. N.C. Gen. Stat. § 7B-101(15) (Supp. 2016).

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346

N.C. 244, 248, 485 S.E.2d 612, 615 (1997). When the child has not been in the parent's custody, the court "must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case." *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

"An individual's 'lack of parental concern for his child' is simply an alternate way of stating that the individual has failed to exercise proper care, supervision, and discipline as to that child." *Williamson,* 91 N.C. App. at 675, 373 S.E.2d at 320. "[O]n the question of neglect, the trial judge may consider, in addition [to failure to provide physical necessities], a parent's complete failure to provide the personal contact, love, and affection that inheres in the parental relationship." *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982).

In the case of *In re Mills,* 152 N.C. App. 1, 7-8, 567 S.E.2d 166, 170 (2002), *cert. denied,* 356 N.C. 672, 577 S.E.2d 627 (2003), the respondent did not know of the existence of the children for several years. The trial court made findings of fact based upon DSS social worker's testimony that DSS had contacted the respondent in October of 1999 and the respondent had done nothing until after DSS filed its petition to terminate the respondent's parental rights in April 2000. The respondent himself testified he had never seen the child and admitted he had never provided any love, nurturance or support for the children. *Id*. at 5, 567 S.E.2d at 168.

This Court upheld the trial court's conclusion that the father neglected the children was based upon evidence showing that the father, after learning of the existence of the children, "displayed merely minimal interest in their welfare[,]" and never requested visitation rights, paid any child support for the children, or sent the children any gifts or acknowledgment of their birthdays. *Id.* at 8, 567 S.E.2d at 170.

Here, the evidence and the court's findings of fact support the court's conclusion that Respondent neglected the juvenile. The findings show after his paternity of Elizabeth was established in August 2015, Respondent took no action to develop a relationship with the child, never paid any support for the child, and never sent any cards or gifts. He did not attend the adjudication hearing in October 2015, and for two months after receiving the motion to terminate his parental rights, he took no action to provide support to the child or to establish a relationship with her.

Upon the determination that one ground to terminate is supported by the findings of fact, we need not address the other grounds to terminate as found by the trial court to exist. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam,* 360 N.C. 360, 625 S.E.2d 779 (2006). We do not address Respondent's arguments concerning the other grounds found by the court.

Respondent did not challenge the court's determination that the best interests of the juvenile are accomplished by terminating Respondent's parental rights. Respondent has abandoned this proposed issue. N.C.R. App. P. 28(a).

VI. Conclusion

The trial court's conclusion that Respondent neglected Elizabeth is supported by findings of fact, which are supported by clear, cogent and convincing evidence. The order terminating Respondent's parental rights is affirmed. *It is so ordered*.

AFFIRMED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).