IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-111

Filed: 18 July 2017

Guilford County, No. 15 JT 27

IN THE MATTER OF: A.P.R.

Appeal by respondent-mother from order entered 12 October 2016 by Judge Randle L. Jones in Guilford County District Court. Heard in the Court of Appeals 29 June 2017.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Anné C. Wright for respondent-appellant mother.

Elon University School of Law Guardian ad Litem Appellate Advocacy Clinic, by Alan D. Woodlief, Jr., for guardian ad litem.

ARROWOOD, Judge.

Respondent-mother appeals from an order terminating her parental rights to her minor child A.P.R. ("Andy").[1] The father is not a party to the appeal. After careful consideration, we affirm the trial court's order.

I. Background

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading.

Respondent-mother has a history with child protective services dating back to 2004, with eight reports having been filed since that time relating to incidents involving Andy's siblings. Respondent-mother gave birth to Andy at High Point Regional Hospital in February 2015. On the day Andy was born, a report was made to the Guilford County Department of Health and Human Services ("DHHS") alleging that respondent-mother had a history with child protective services and that there were concerns about domestic violence between respondent-mother and the father. There were also concerns that respondent-mother was living in a shelter when she was not living with the father and that she had tested positive for marijuana seven months prior to Andy's birth.

On 2 March 2015, DHHS filed a petition alleging that Andy was a neglected and dependent juvenile. An order for nonsecure custody was entered that same day. Following a 14 May 2015 hearing, the trial court entered an order on 19 June 2015 adjudicating Andy neglected and dependent and ordering respondent-mother to comply with a case plan developed with DHHS. The case plan required respondent-mother to address her emotional and mental health issues, obtain and maintain stable housing and employment, improve parenting skills, address domestic violence issues, and address substance abuse issues.

The trial court held a permanency planning hearing on 9 July 2015, after which it entered a 6 August 2015 order changing the permanent plan from reunification to

adoption with a concurrent plan of guardianship. On 21 December 2015, DHHS filed a motion to terminate respondent-mother's parental rights, alleging as grounds that: (1) respondent-mother neglected the juvenile; (2) the juvenile had been placed in DHHS's custody and respondent-mother, for a continuous period of six months next preceding the filing of the motion, had willfully failed to pay a reasonable portion of the cost of care of the juvenile although physically and financially able to do so; and (3) respondent-mother was incapable of providing for the proper care and supervision of the juvenile, such that the juvenile was dependent. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3), (6) (2015). After a 12 September 2016 hearing, the trial court entered an order on 12 October 2016 terminating respondent-mother's parental rights to Andy after adjudicating the existence of all three grounds alleged in DHHS's motion. Petitioner served that order on respondent-mother the same day. Respondent-mother gave timely notice of appeal on 14 November 2016.[2]

II. Discussion

[2] Respondent-mother erroneously claims that she filed notice of appeal on 12 November 2016, a Saturday. A review of the record reveals that notice of appeal was actually filed on 14 November 2016. "In civil actions, the notice of appeal must be filed 'within thirty days after entry of the judgment if the party has been served with a copy of the judgment within the three day period' following entry of the judgment. N.C. R. App. P. 3(c)(1) (2013); N.C. Gen. Stat. § 1A-1, Rule 58 (2013)." *Magazian v. Creagh*, 234 N.C. App. 511, 512, 759 S.E.2d 130, 131 (2014). Thus, it would seem the thirty-day window for filing notice in this case expired on 11 November 2016, thirty days after the termination order was entered and served. However, 11 November 2016 was Veterans Day and respondent-mother had until the following Monday, 14 November 2016, to file notice of appeal. *See* N.C. Gen. Stat. § 1A-1, Rule 6(a) ("The last day of the period so computed is to be included unless it is a Saturday, Sunday or a legal holiday when the courthouse is closed for transactions, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions.").

On appeal, respondent-mother contends that the trial court erred in finding that grounds existed to terminate her parental rights. Upon review, we hold that the trial court correctly found grounds to terminate respondent-mother's parental rights on the basis of neglect.

> At 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. If the trial court concludes that the petitioner has proven grounds for termination, this Court must determine 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. Factual findings that are supported by the evidence are binding on appeal, even though there may be evidence to the contrary. 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.
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> Under N.C. Gen. Stat. § 7B-1111(a), the trial court need only find that one statutory ground for termination exists in order to proceed to the dispositional phase and decide if termination is in the child's best interests.

In re L.A.B., 178 N.C. App. 295, 298-99, 631 S.E.2d 61, 64 (2006) (internal quotation marks, citations, and alteration omitted).

N.C. Gen. Stat. § 7B-1111(a)(1) permits a trial court to terminate parental rights upon finding that the parent has neglected the juvenile. A neglected juvenile is, in part, one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15)

(2015). "If there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000).

In the present case, the trial court made the following findings regarding respondent-mother's ongoing struggles with domestic violence, mental health, and substance abuse, and her inability to comply with her case plan:

> 9. The respondent completed a parenting/psychological assessment with Dr. Thomas Holm on April 1, 2015. In his report dated June 17, 2015, Dr. Holm described the respondent as immature with a low frustration tolerance. Dr. Holm remarked that respondent acted without considering the consequences of her actions and that her mental health needs would interfere with her ability to be an effective parent without ongoing mental health treatment. Dr. Holm also indicated that respondent's ability to manage her alcohol dependency on a consistent basis would be an ongoing challenge which, if not managed appropriately, would adversely impact respondent's ability to parent effectively.
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> 11. Visitation between the respondent and juvenile was suspended on July 9, 2015 due [to] the respondent's relapse on June 1, 2015. On June 10, 2015, the respondent reported to the visitation smelling of alcohol. The respondent tested negative on the breathalyzer test that was subsequently administered.
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> 12. The respondent last visited with the juvenile on

June 22, 2016. Since that visit, the respondent has not contacted [DHHS] to attempt reinstatement of visitation or to inquire about the juvenile's well-being.

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14. On June 17, 2015, the respondent completed a domestic violence assessment. Five days later, the respondent reported a domestic violence incident between her and the juvenile's father. Most of the incidents of domestic violence involving [the father] occurred at his residence where the respondent was residing and involved alcohol or other substances. . . .

15. The respondent was often the aggressor and previously claimed that [the father] was not abusive and was merely defending himself. The respondent has repeatedly indicated that she and [the father] only fought when under the influence of alcohol or other substances. From August 26, 2012 through November 29, 2015, law enforcement personnel were contacted on at least twenty-four occasions involving incidents with [respondent]. Alcohol or some other substance was usually a factor.

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17. On July 23, 2015, police officers responded to a 911 call for assistance. Upon arrival, the officers found respondent in a highly agitated state. She was again combative and argumentative and spat on one of the officers. She was arrested and remained in custody until October 19, 2015.

18. On November 23, 2015, police investigated a disturbance at a convenience store cause[d] by respondent when the clerk refused to sell alcohol to the respondent. The respondent was banned from the store as a result of her combative behavior and refusal to leave the premises.

19. On November 29, 2015, police officers responding to a 911 call at [the father's] residence, arrived to find both the respondent and [father] intoxicated. Both advised they had been assaulted by the other and each had visible bruises and scratches. Both were arrested and charged with simple assault.

20. The respondent moved out of [the father's] residence in February 2016 but continues to contact him and states that she misses him. The respondent blames [DHHS] for her decision, stating that "you say he's bad for me." After a stint in a homeless shelter, the respondent currently resides in a boarding house with five individuals whose names she refused to disclose. Law enforcement has visited the residence on numerous occasions for various disturbances between the residents. The respondent has experienced disagreements with a female housemate which has also resulted in calls to law enforcement.

21. While residing at some location in Forsyth County, the respondent was arrested in March 2016 for resisting a public officer. . . .

22. The respondent continues to use alcohol and habitually drinks to a state of drunkenness. The respondent has admitted to marijuana use and routinely used marijuana during her pregnancy. The respondent has not demonstrated an ability or willingness to control her behavior when under the influence of alcohol or other substances and does not indicate a willingness to abstain from such substances as she consistently declines established treatment regimens and refuses to take the prescribed medications.

23. The respondent was medically evaluated on June 15, 2016 after hospitalization for depression and homicidal ideations. At the conclusion of the evaluation, the respondent declined a referral for

various behavior therapies and substance abuse treatment.

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26. The respondent has been diagnosed with major depressive disorder, unspecified anxiety disorder, alcohol use disorder and cannabis use disorder. The respondent was initially diagnosed with depression and anxiety at eight years of age. The respondent has intermittently received mental health services consisting of drug therapy and various behavior therapies for the past ten years.

27. The respondent submitted to an updated comprehensive clinical assessment on December 5, 2014. Although the assessment was recommended in order to determine the respondent's need for additional services, the respondent was uncooperative during the assessment, often refusing to answer questions. The clinician noted that the respondent's lack of cooperation precluded a definitive diagnosis.

28. As previously indicated, the respondent was most recently evaluated on June 15, 2016. The respondent's unwillingness to address mental health and dependency issues remains intact as respondent persists in her refusal to obtain and maintain treatment for mental health and dependency issues.

29. The respondent admits that she has mental health and dependency issues but maintains that she can cope without the intervention of health care professionals and established treatment regimens. The respondent confirms that she will not take psychotropic medication because it changes the chemical make-up of her brain and is ineffective. The respondent prefers instead to use unspecified over the counter remedies that she purchases from a health food store. The respondent

claims to attend Alcohol Anonymous and Narcotic Anonymous meetings as respondent deems her attendance is necessary. In addition, the respondent contacts various acquaintances via telephone when respondent deems such contact to be beneficial.

30. The respondent's mental health concerns are treatable but are beyond the respondent's proficiency to diagnose and treat. The respondent has not demonstrated the ability to voluntarily . . . remain sober. The respondent's lack of sobriety has repeatedly resulted in dire consequences including fighting and incarceration, neither of which promotes a healthy environment for the juvenile or the respondent for that matter.

31. Respondent's resolution to the above-referenced problems is neither consistent nor decisive and is not beneficial. Unless and until the respondent sincerely addresses her mental health and substance abuse, it is doubtful that she will be able to obtain or maintain employment which is critical to her ability to provide appropriate care for the juvenile.

32. The respondent acknowledges that she needs help but her actions conflict with such acknowledgement since she refuses to follow preferred treatment regimens and all other professional recommendations. If respondent continues to refuse treatment while admitting to a need for help and demonstrating continued difficulties in abstaining from alcohol and illegal drugs, she cannot realistically hope to provide appropriate care for the juvenile.

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34. The respondent's failure to abstain from the use and abuse of alcohol and other substances, to utilize the principles learned during domestic violence education and training, to secure and maintain adequate employment and satisfactory housing along with her

> failure to address her mental health needs over a sustained period all led to [DHHS]'s obtaining nonsecure and continuous custody of the minor child. The respondent's actions or lack thereof present the reasonable probability and likelihood that such incapability will continue in the foreseeable future and render respondent unable to effectively parent the juvenile.

Respondent-mother first challenges finding of fact 9, arguing that the finding is supported by inadmissible hearsay evidence. However, respondent-mother did not object at the hearing when the DHHS social worker testified to the contents of the report that respondent-mother now contends was hearsay, and respondent-mother therefore failed to preserve this issue for appeal. *See In re J.H.*, __ N.C. App. __, __, 780 S.E.2d 228, 239 (2015) (" 'In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired' and must have 'obtain[ed] a ruling upon the party's request, objection, or motion.' " (quoting N.C. R. App. P. 10(a)(1))).

Respondent-mother next challenges finding of fact 12, arguing that since she attended a meeting with DHHS in May 2016, the finding that she "has not contacted [DHHS since 22 June 2015] to attempt reinstatement of visitation or to inquire about the juvenile's well-being[]" was contradicted by the evidence. Although the DHHS social worker did testify that respondent-mother had a meeting with DHHS in May 2016, there was no evidence that the meeting was the result of respondent-

mother having contacted DHHS, nor was there evidence that respondent-mother had attempted reinstatement of visitation or inquired about Andy's well-being. The DHHS social worker testified that, since respondent-mother's visitation with Andy was suspended, "there's not been contact initiated by her to ask about the welfare of the child." The challenged portion of finding of fact 12 is supported by the evidence.

In her challenge to finding of fact 15, respondent-mother does not contend that the finding is unsupported by the evidence, but instead contends that, given the absence of evidence presented showing when and why police were contacted, and by whom, "[t]he mere fact that law enforcement was 'contacted' twenty-four times is not enough, without more, to determine how these contacts may or may not relate to neglect by [respondent-mother]." Respondent-mother fails to present an argument as to why this Court should disregard a finding of fact that respondent-mother has not argued is unsupported by the evidence. We find no merit in respondent-mother's challenge to finding of fact 15.

Respondent-mother next challenges finding of fact 20, first arguing that there was no evidence to support the finding that respondent-mother "blames [DHHS] for her decision [to move out of the father's residence], stating that 'you say he's bad for me.' " DHHS concedes that this quote attributed to respondent-mother cannot be found in the record. We also find insufficient evidence in the record to support the finding that respondent-mother blames DHHS for her decision to move out of the

father's residence. We disregard this portion of finding of fact 20 in our review of the trial court's order.

In regard to finding of fact 20, respondent-mother also challenges as unsupported by the evidence the finding that "law enforcement [has] visited the [boarding house where respondent-mother resided] on numerous occasions for various disturbances between the residents." Respondent-mother contends that the evidence only showed two calls to law enforcement regarding the boarding house, and that this cannot be said to constitute "various disturbances" to which officers responded. Contrary to respondent-mother's contention, our review of the transcript reveals testimony that law enforcement was called to the boarding house three times, each time regarding a different type of disturbance. This challenged portion of finding of fact 20 is supported by the evidence.

In her challenges to findings of fact 22, 28, 30, 31, and 32, respondent-mother contends generally that these findings are not supported by clear and convincing evidence. However, respondent-mother does not argue how these findings were lacking in evidentiary support, instead citing portions of her own testimony in support of her implicit contention that the trial court should have found the facts differently. " 'The trial [court] determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, [the trial court] alone determines which inferences to draw

and which to reject.' " *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (alterations in original) (quoting *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985)), *aff'd and modified on other grounds*, 362 N.C. 446, 665 S.E.2d 54 (2008).

In her only specific challenge to these findings, respondent-mother contends that "there was no evidence that her chosen treatment was not effective[]" because "[t]here were no findings of fact relating to any specific alcohol related incident involving [respondent-mother] since the November 29, 2015 incident almost a year before the termination hearing." We note that the lack of a finding regarding recent alcohol-related incidents is not tantamount to a lack of evidence of such. In any event, there was evidence of respondent-mother's continued use of alcohol after 29 November 2015. Respondent-mother testified that she had "drank probably 2 or 3 times" since May 2016, and that it had been weeks since she had last consumed alcohol at the time of the termination hearing. Furthermore, the DHHS social worker testified to a 31 January 2016 incident in which law enforcement was called to the father's residence for a domestic disturbance and found respondent-mother there, who admitted that she and the father had been drinking. This evidence supported the trial court's finding that respondent-mother's self-diagnosis and treatment for her drinking problem in lieu of "established treatment regimens" was not beneficial to her. We find no merit in respondent-mother's challenges to findings of fact 22, 28, 30, 31, and 32.

Respondent-mother challenges the portion of finding of fact 34 stating that she failed "to utilize the principles learned during domestic violence education and training." Respondent-mother contends the fact that she had moved out of the father's residence and had not been involved in another relationship with domestic violence demonstrates that she had in fact utilized the principles learned during domestic violence education and training. Our review of the transcript reveals that, despite having had an assessment conducted through a domestic violence program on 17 June 2015, respondent-mother was involved in a domestic violence incident with the father five days later, an incident leading to her incarceration. Upon her release on 19 October 2015, respondent-mother returned to the father's residence and was involved in another domestic violence incident with him on 29 November 2015, and again on 31 January 2016. Despite numerous incidents of domestic violence with the father, respondent-mother told the DHHS social worker in August 2016 that she still spoke with the father "to see how he was doing, to tell him that she loved him and missed him[.]" Respondent-mother was assaulted by another man in June 2016 after she had been drinking, resulting in a visit to the hospital. When questioned about that incident at the hearing, respondent-mother stated that "I'm staying away from men period because I attract men that like to abuse me." This evidence supported the trial court's finding that respondent-mother had not demonstrated the ability to use what she learned from domestic violence education and training.

The remaining portions of the above-listed findings of fact are unchallenged and are therefore binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged findings are "presumed to be supported by competent evidence and [are] binding on appeal"). While respondent-mother challenges other portions of the findings of fact, we need not review those challenges given our determination that the above-listed findings support the trial court's conclusion that grounds existed to terminate respondent-mother's parental rights on the basis of neglect. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("[W]e agree that some of [the challenged findings] are not supported by evidence in the record. When, however, ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error.").

In arguing the contrary, respondent-mother contends the evidence shows that her issues with domestic violence, substance abuse, and mental health are in the past and cannot support a determination that there is a likelihood of repetition of neglect if Andy was returned to her care. However, the trial court's findings contradict respondent-mother's characterization of the evidence and show that respondent-mother continued to struggle with substance abuse and mental health issues at the time of the termination hearing, and that her decision to self-diagnose and treat in lieu of seeking help through established treatment regimens made it unlikely that

she would overcome these issues in the foreseeable future. Despite seeking some help for her domestic violence issues, respondent-mother continued to be involved in domestic violence incidents. Furthermore, respondent-mother was not living in a home that would be suitable for Andy, a fact she conceded at the hearing. The evidence of respondent-mother's inability to overcome the challenges that resulted in Andy being adjudicated neglected supports the trial court's ultimate finding that such neglect was likely to repeat in the future, which in turn supports the court's conclusion that grounds existed to terminate respondent-mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1).

While respondent-mother also challenges the trial court's conclusions that the grounds for termination listed in N.C. Gen. Stat. § 7B-1111(a)(3) and (6) existed in this case, we need not address these challenges given our decision to uphold the trial court's conclusion that respondent-mother's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat.] § 7B-1111 is sufficient to support a termination."). As a result, we affirm the trial court's order terminating respondent-mother's parental rights to the juvenile.

AFFIRMED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).