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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-913

Filed 15 August 2023

Wake County, No. 20 JT 91

IN THE MATTER OF: G.P.C.

Appeal by Respondent-Father from order entered 12 July 2022 by Judge Ashleigh P. Dunston in Wake County District Court. Heard in the Court of Appeals 31 July 2023.

Mary Boyce Wells for Petitioner-Appellee Wake County Health and Human Services.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Mark M. Rothrock and Michael W. Mitchell, for Guardian Ad Litem.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Jacky Brammer, for Respondent-Appellant Father.

RIGGS, Judge.

Respondent-Father (“Father”) appeals from an order terminating his parental rights in G.P.C. (“Gordon”).¹ For the reasons stated herein, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On 16 July 2020, when Gordon was five months old, Wake County Health and

¹ A pseudonym is used to protect the identity of the juvenile.

Human Services (“HHS”) obtained nonsecure custody of Gordon and filed a juvenile petition alleging him to be a neglected juvenile. The petition alleged that the family had prior history with HHS involving issues of domestic violence, substance abuse, and mental health issues.

Before Gordon was born in October 2019, HHS received a report that Father had been drinking alcohol and had choked Respondent-Mother (“Mother”) in the presence of the children.² Pursuant to a safety plan, Mother agreed to take the children to Ashe County until the parties could receive appropriate services to address their issues. However, Mother did not engage in services in Ashe County and returned to Wake County in December 2019. On 25 February 2020, Father engaged in a substance abuse assessment. In April 2020, the safety plan was amended to allow Father to be around the children, and he moved back into the family home.

The 16 July 2020 petition alleged social workers conducted a home visit on 4 June 2020, wherein Mother asserted Father had pushed her against a wall during an argument in the presence of the children. She also alleged Father was drinking alcohol again. Father agreed to leave the home as part of a safety plan. However, on 14 July 2020, a social worker discovered Father had been present in the family home since 3 July 2020. Mother sent the social worker a text message that stated Father

² There are four other children involved in this case, Gordon’s half-siblings, but they are not subjects of the appeal. Father is the biological father to only Gordon. Mother is not a party to this appeal.

would not leave the house. Mother reported that he had threatened her and the children that if they disclosed his presence in the home, the children would be separated from Mother. Mother stated that she would take the children to stay with her mother, but HHS asserted that staying with the maternal grandmother was “not a feasible long term plan” due to maternal grandmother’s own history with Child Protective Services and her current medical and mental health issues.

On 1 September 2020, the trial court entered an order adjudicating Gordon to be a neglected juvenile. In a separate disposition order entered 30 September 2020, the trial court ordered Father to comply with the Out of Home Family Services Agreement (“OHFSA”) which required complying with a visitation agreement; engaging in a domestic violence evaluation and any recommended treatment; completing a mental health assessment and following recommendations; completing parenting education and demonstrating learned skills; maintaining sufficient income to meet his and Gordon’s needs; maintaining safe, stable housing free from domestic violence; submitting to a substance abuse assessment and complying with recommendations, including random drug screens; and maintaining regular contact with HHS.

Following a permanency planning hearing on 7 December 2020, the trial court entered a permanency planning review order 5 January 2021. The trial court found that Father had completed an intake with Triangle Family Services on 18 August 2020 and was put into a weekly class to address domestic violence issues. On 16

October 2020, he was terminated from the program after being arrested for violating a domestic violence protective order obtained by Mother. Father had not completed an updated substance abuse assessment as requested and had been terminated from parenting education after missing too many classes. He reported living with a friend in Garner, North Carolina, but did not provide any verification. On 17 November 2020, he was detained by immigration authorities.

On 20 December 2020, Father was deported to Guatemala.³ In January 2021, Father re-entered the United States in Arizona. Shortly thereafter, he was deported to Guatemala for a second time.

The trial court held a permanency planning hearing on 24 May 2021, and the trial court entered a permanency planning review order on 22 June 2021. The trial court found that in May 2021, Father reported living in Guatemala with his sister and earning \$180.00 per week as a construction worker. Father requested for Gordon to come live with him in Guatemala. On 19 January 2021, HHS contacted the Guatemalan consulate to submit a request for a home study, however, HHS could not provide any confirmation of Father's residency because he moved frequently and failed to update HHS of his whereabouts. HHS attempted to conduct Child and Family Team meetings with Father on 28 January 2021 and 7 April 2021 but was

³ While HHS indicates in a Court Summary dated 24 May 2021 that Father was deported to Guatemala in December 2021 and the termination order also finds he was deported in late 2021, it appears he was deported in December 2020.

unable to successfully do so due to “connectivity issues and dropped calls.” The permanency planning order set the primary plan as reunification with a parent, with a secondary plan of guardianship or custody with an approved caretaker or adoption.

Following a permanency planning hearing on 25 August 2021, the trial court entered a permanency planning review order on 4 October 2021. The trial court found that on 24 May 2021, Father had contacted HHS to discuss having virtual visits with Gordon. He reported living in a two-bedroom apartment and expressed his desire to be reunited with Gordon in Guatemala, but HHS could not verify his address or the status of Father’s case plan. When HHS addressed Father’s lack of contact with Gordon, Father stated he needed fifteen days to change his email address, purchase a new phone, and locate a new internet provider. However, Father did not provide HHS with this information, and HHS faced challenges in contacting Father due to “dropped calls and poor internet and telephone connections.” The trial court found that Father had called Gordon’s foster parents once since the last permanency planning hearing. The primary permanent plan was changed to adoption with a secondary permanent plan of reunification with a parent.

On 6 October 2021, HHS filed a motion to terminate Father’s parental rights to Gordon. HHS alleged grounds existed to terminate Father’s parental rights for neglect, willfully leaving Gordon in foster care or placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to his removal, and willful abandonment. *See* N.C. Gen. Stat. §

7B-1111(a)(1) - (2), and (7) (2021).

A permanency planning hearing was held on 23 February 2022, and the trial court entered a permanency planning review order on 27 April 2022. The trial court found that Father had again re-entered the United States and was residing in Oklahoma. Father reported that he was living with his employer and spending \$400.00 per month on rent, and his employer stated that Father was earning approximately \$700.00 per week. On 27 January 2022, Father completed an intake with the Latino Community Development Center in Oklahoma for parenting services and was awaiting a start date for a parenting class. The trial court further found Father had missed an appointment on 12 October 2021 for an updated substance use assessment and did not reply to phone calls or text messages to discuss missing the appointment or rescheduling. HHS contacted the Oklahoma Department of Human Services on 31 January 2022 to discuss options for Father to undergo a psychological evaluation and was awaiting a response.

The motion to terminate Father's parental rights came on for hearing on 2 June 2022 and 14 June 2022. On 12 July 2022, the trial court entered an order finding that grounds exist to terminate parental rights on the basis of neglect, willfully leaving a child in foster care for more than 12 months and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1),(2) and (7) (2021).

The trial court also concluded that it was in Gordon's best interests that Father's parental rights be terminated, *see* N.C. Gen. Stat. § 7B-1110(a) (2021), and

terminated his rights. Father entered timely notice of appeal on 4 August 2022.

II. ANALYSIS

Father challenges the trial court's adjudication of the existence of grounds to terminate his parental rights to Gordon.

A. Standard of Review

When reviewing the trial court's adjudication of grounds for termination, we examine whether the court's findings of fact are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Any unchallenged findings are deemed supported by competent evidence and are binding on appeal. The trial court's conclusions of law are reviewed de novo.

In re Z.G.J., 378 N.C. 500, 508–09, 862 S.E.2d 180, 187 (2021) (cleaned up). “[A]n adjudication of any single ground in N.C.[Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019).

B. Termination of Parental Rights Was Proper

Under N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights if it concludes the parent has neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is defined, in pertinent part, as a juvenile “whose parent, guardian, custodian or caretaker . . . [d]oes not provide proper care, supervision, or discipline[;] . . . [or c]reates or allows to be created a living environment that is injurious to the juvenile's welfare.” N.C. Gen. Stat. § 7B-101(15) (2021). Termination under N.C. Gen. Stat. § 7B-1111(a)(1)

“requires a showing of neglect at the time of the termination hearing.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016).

“[I]f the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.” *Id.* This is because “in most termination cases the children have been removed from the parent[’s] custody before the termination hearing.” *In re Beasley*, 147 N.C. App. 399, 404, 555 S.E.2d 643, 647 (2001). The “determinative factors” in assessing the likelihood of a repetition of neglect are “the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding.*” *In re Z.G.J.*, 378 N.C. at 509 (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018).

Here, the trial court’s unchallenged findings demonstrate that the main issues that led to Gordon’s removal from Father’s care on 16 July 2020 were allegations of domestic violence and substance abuse. Father was ordered to comply with his OHFSA which included: visiting with Gordon at least monthly; engaging in a domestic violence education program; completing a psychological assessment and following recommendations; submitting to a substance abuse assessment and complying with recommendations; obtaining and maintaining suitable housing and

income sufficient for himself and Gordon; and participating in parenting education and demonstrating learned skills.

In its termination order, the trial court made specific findings regarding Father's lack of progress on his case plan. Father completed an intake with Triangle Family Services on 18 August 2020 to participate in domestic violence treatment and was placed in a twenty-six-week program. He started classes on 26 August 2020 but was terminated from the program on 16 October 2020 after "engaging in a domestic violence incident with the mother." Father did not re-engage in domestic violence treatment. In October 2020, Father was arrested for domestic violence against Mother. Thereafter, he was detained for immigration issues and agreed to be deported to Guatemala.

The trial court further found Father lived in two separate residences in Guatemala and lived in Mexico before re-entering the United States. Father was deported a second time. In October 2021, he re-entered the United States by moving to Oklahoma. He had borrowed \$21,000.00 to facilitate his re-entry and testified he could not leave Oklahoma until the remainder of the debt, \$18,000.00, was paid. Father reported living with this employer and earning \$700.00 a week doing landscaping, but HHS could not confirm his housing or employment.

The trial court found that from October 2020 to October 2021, Father had limited contact with HHS and had no visits with Gordon. He listed his sister's home in Guatemala as his residence, but Father left the home before it could be assessed

by Guatemalan authorities. On 24 May 2021, Father contacted HHS and requested virtual visits with Gordon, but HHS was unable to contact Father to arrange these visits. Lapses in contact with HHS could be explained by technical difficulties and connectivity challenges related to Father's living situations abroad. Father also failed to report addresses from his frequent moves. On 1 December 2021, Father began having virtual visits with Gordon.

The trial court found that Father completed a substance abuse referral on 9 September 2021 and a substance abuse assessment on 30 March 2022, but he failed to complete a random drug screen on 4 April 2022. Father completed a psychological assessment referral on 17 September 2020 and was scheduled for an assessment in November 2020, but his arrest and deportation prevented this from occurring. HHS contacted the Oklahoma Department of Human Services on 31 January 2022 to discuss options for testing and was awaiting a response. In August 2020, Father was referred for parenting education, and he completed five classes before his arrest in October 2020. On 8 October 2021, HHS sent a new referral for parenting education. On 27 January 2022, Father completed the intake for a Spanish-speaking parenting class and was recommended to participate in a sixteen-week class. On 13 April 2022, he reported he could no longer pay for the class.

The trial court determined that:

[t]here is a high likelihood that [Gordon] would be neglected if returned to the care of [Father]. [Father's] neglectful conduct continued after the child came into

foster care and he has received little treatment to address the problems that led to the removal of [Gordon] from his care. [Father] has struggled to meet his own basic needs since being arrested in October 2020 and has been deported again on at least one other occasion. He started visiting virtually in December 2021 but, by his own testimony, he is not free to leave Oklahoma due to debt he has incurred.

First, Father contests the portions of findings of fact 71, 73, and 83 that provide in October 2020, he “engage[d] in a domestic violence incident with mother,” he “was arrested for domestic violence against [Mother],” and he was “incarcerated for domestic violence with [Mother].” Father argues that these findings are unsupported by the evidence because the testimony showed that he was “*arrested for allegedly violating a [domestic violence protective order], not an incident of domestic violence[.]*” We agree that the evidence indicates he was arrested in October 2020 for violating a domestic violence protection order obtained by Mother. Thus, we disregard the challenged portions of findings of fact 71, 73, 83. *See, e.g., In re S.M.*, 375 N.C. 673, 691, 850 S.E.2d 292, 306 (2020).

In his next argument, Father does not contest the fact that Gordon was previously adjudicated neglected by order entered 1 September 2020, but he argues that the trial court erred in concluding that there was a likelihood of future neglect if Gordon was returned to his care. Specifically, Father contends that the trial court failed to identify the “neglectful conduct” that continued after Gordon was removed from his care and adjudicated this ground based entirely on his deportation. He asserts that by considering his financial and deportation problems, the trial court

improperly based its conclusion that there was a likelihood of future neglect on socioeconomic factors. We are not convinced.

The trial court's findings establish that Father had begun to have regular, virtual visits with Gordon in December 2021. However, Father failed to complete a psychological assessment and failed to complete parenting classes. In addition, neither his income nor housing situation could be confirmed by HHS. More significantly, Gordon was removed from Father's care primarily due to allegations of substance abuse and domestic violence. The trial court's findings demonstrate that from the time of Gordon's removal in July 2020, until the time of the termination hearing in June 2022, Father failed to sufficiently address these issues. Although he started a twenty-six-week domestic violence education program in August 2020, he was terminated from the program in October 2020 after allegedly violating a domestic violence protective order. By the time of the termination hearing, Father had not re-engaged in domestic violence treatment, despite HHS's efforts to re-enroll him in Oklahoma. As to substance abuse concerns, Father completed a substance abuse referral and assessment in September 2021 and March 2022, respectively, but failed to undergo a random drug screen in April 2022. The evidence shows Father did not successfully complete the domestic violence and substance abuse components of his case plan.

Therefore, the concerns or "neglectful conduct" that resulted in Gordon's placement with HHS continued to exist at the time of the termination hearing.

Father's failure to make progress in his case plan and failure to correct the concerns that led to Gordon's placement with HHS by the time of the termination hearing support the trial court's determination of a likelihood of future neglect if Gordon was returned to his care.

Father argues that the trial court considered improperly his immigration status in reaching its decision. Generally, in considering whether the trial court properly terminated parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), this Court has previously held that incarceration:

does not negate a father's neglect of his child because the sacrifices which parenthood often requires are not forfeited when the parent is in custody. Thus, while incarceration may limit a parent's ability to show affection, it is not an excuse for a parent's failure to show interest in a child's welfare by whatever means available. . . .

In re S.D., 374 N.C. 67, 76, 839 S.E.2d 315, 323 (2020) (cleaned up).

Following that logic, in *In re B.S.O.*, this Court held that "a parent's deportation should serve as neither a sword nor a shield in a termination of parental rights decision." *In re B.S.O.*, 234 N.C. App. 706, 711, 760 S.E.2d 59, 64 (2014) (cleaned up). This Court stated that:

[a]lthough incarceration and deportation are not exactly the same, we find the cases dealing with incarcerated parents to be instructive. In both situations, a parent has been removed from his home by law enforcement action, presumably against his will. The cases recognize that a parent's opportunities to care for or associate with a child while incarcerated are different than those of a parent who is not incarcerated. The opportunities of an incarcerated

parent are even more limited than those of a deported parent, in that once the deported parent has been removed from this country, he would be free to work, send funds to support a child, or communicate with a child by phone, internet, or mail from his own country. His opportunities to see the child personally would be limited, but he would be free to pursue legal action to attempt to have the child returned to his custody in his own country.

Id. at 711–12, 760 S.E.2d at 64. Although the Court in *B.S.O.* considered whether the trial court properly terminated the respondent’s parental rights for willfully abandoning his children pursuant to N.C. Gen. Stat. § 7B-1111(a)(7), we find the comparison of deportation to incarceration instructive.

In the present case, the trial court did not use Father’s deportation as a sword to terminate his parental rights. Father agreed to be deported in October 2020 after being detained for immigration issues, and re-entered the United States the most recent time in October 2021. During his time outside of the United States, he had limited contact with HHS. No evidence or findings suggest he sent funds to support Gordon or attempted to communicate with Gordon other than a single call to the foster mother in August 2021. Moreover, even assuming his ability to make progress on his case plan was encumbered during the time he was deported Father had time and opportunity before he was deported and after he again re-entered the United States in October 2021 to work on his case plan. He cannot now use his deportation as a shield to excuse the fact that by the time the termination hearing took place in June 2022, he had failed to make sufficient progress.

Furthermore, Father’s argument that the trial court improperly based termination of his parental rights on socioeconomic factors, particularly his debt and deportation, is equally unpersuasive. Father relies on this Court’s holding in *Dunn v. Covington*, 272 N.C. App. 252, 846 S.E.2d 557 (2020). In *Dunn*, this Court examined a trial court’s finding that the natural parent was unfit and had acted inconsistently with their constitutionally protected status as a parent when granting permanent custody to the child’s paternal grandparents. *Dunn*, 272 N.C. App. at 264–65, 846 S.E.2d at 567. This Court held that:

[s]ocioeconomic factors . . . do not show a parent’s unfitness or acts inconsistent with constitutionally-protected status While socioeconomic factors such as the quality of a parent’s residence, job history, or other aspects of their financial situation would be relevant to the determination of whose custody is in the best interest of the child, those factors have no bearing on the question of fitness.

Dunn, 272 N.C. App. at 265, 846 S.E.2d at 567.

Dunn is distinguishable from this case, as it did not deal with a termination of parental rights proceeding nor the assessment of progress of a parent toward satisfying a case plan. Beyond that, Father’s argument that the trial court based its determination of a likelihood of future neglect on socioeconomic factors is a mischaracterization of the trial court’s reasoning. While the trial court considered Father’s struggles with “meet[ing] his own basic needs” since being deported and his testimony that he could not leave Oklahoma “due to debt he has incurred[,]” the crux of the trial court’s determination of a high likelihood of future neglect was based on

Father's continued "neglectful conduct" and the "little treatment [received] to address the problems that led to the removal" of Gordon from his care. The trial court's findings clearly show it based its determination of a likelihood of future neglect if Gordon was returned to Father's care on the fact that Father had failed to make significant progress in correcting the concerns that led to Gordon's removal from his care by the time of the termination hearing. *See In re S.D.*, 374 N.C. at 87–88, 374 S.E.2d at 330 (holding that the evidence supported the findings of past neglect and likelihood of future neglect when the respondent had a history of criminal activity and substance abuse that resulted in his incarceration and failed to make significant progress toward correcting the barriers to reunification).

We hold the trial court's findings support its determination of a likelihood of future neglect if Gordon were returned to Father's care and affirm the trial court's determination to terminate Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). After so holding, we need not address Father's remaining arguments challenging the trial court's conclusion that grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and (7). Father does not challenge the trial court's determination that it was in Gordon's best interests that his parental rights be terminated. Accordingly, the trial court's order terminating Father's parental rights is affirmed.

III. CONCLUSION

IN RE: G.P.C.

Opinion of the Court

The trial court did not err in finding and concluding grounds existed to terminate Father's parental rights based upon neglect per N.C. Gen. Stat. § 7B-1111(a). The order of the trial court is affirmed.

AFFIRMED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).