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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-928

Filed 05 September 2023

Catawba County, No. 21 JA 23

IN THE MATTER OF: E.I.H.

Appeal by respondent-father from order entered 20 July 2022 by Judge Clifton H. Smith in Catawba County District Court. Heard in the Court of Appeals 21 August 2023.

Maranda W. Stevens for petitioner-appellee Catawba County Department of Social Services.

Brittany T. McKinney for Guardian ad Litem.

Freedman Thompson Witt Ceberio & Byrd PLLC, by Christopher M. Watford, for respondent-appellant father.

TYSON, Judge.

Respondent-father (“Respondent”) appeals from order terminating his parental rights to his minor child, E.I.H. (“Eric”). See N.C. R. App. P. 42(b) (pseudonym used to protect the identity of minors). We affirm.

I. Background

Burke County Department of Social Services (“Burke County DSS”) filed a petition on 12 February 2021, alleged Eric was a neglected and dependent juvenile, and obtained nonsecure custody. Eric was born as a multiple drug-substance-affected infant, suffered from signs of withdrawal after his birth, and tested positive for amphetamines, methamphetamine, Xanax, heroin, and Klonopin. Mother tested positive for amphetamines and benzodiazepines.

After Eric’s birth, Mother provided two names to identify his potential biological fathers, including Respondent. Respondent was contacted by Burke County DSS, and he submitted to paternity testing on 19 February 2021. Burke County DSS filed a motion for post-adjudication change of venue, citing a conflict of interest on 10 March 2021.

On 18 March 2021, Burke County DSS presented paternity testing results to the trial court, which confirmed Respondent to be Eric’s biological father. The same day, the trial court entered a visitation order providing for Respondent to have a minimum of one hour of supervised visitation per week.

On 1 April 2021, Burke County District Court adjudicated Eric as neglected and dependent after accepting facts stipulated to by DSS, the guardian *ad litem*, and Respondent. Burke County District Court transferred venue to Catawba County District Court, and the Catawba County Department of Social Services (“Catawba County DSS” or “DSS”) assumed custody of Eric.

Following a disposition hearing on 26 April 2021, Catawba County District

Court entered a Disposition Order on 18 June 2021 directing Respondent to enter into and comply with a case plan which included: (1) participating in and completing substance abuse treatment; (2) submitting to random drug screens as requested by DSS; (3) completing a mental health assessment; (4) following all recommendations; (5) obtaining and maintaining stable housing; and, (6) obtaining and maintaining employment. Respondent entered into a case plan on 6 May 2021.

On 17 August 2021, the district court held an initial permanency planning hearing. Following the hearing, and to comply with N.C. Gen. Stat. § 7B-906.2, the district court set the primary plan as reunification with a parent and the secondary plan as adoption. The district court entered a child support order ordering Respondent to pay \$50 per month.

Following a permanency planning review hearing on 14 February 2022, the district court entered an order finding Respondent: missed five requested drug screens; failed to make an appointment for substance abuse treatment services; failed to complete a psychological assessment; and, was unemployed.

The district court also found Respondent's housing met minimum standards, but it would require repairs prior to Eric being reunified in the home. Respondent had not attended four consecutive visits with Eric, which he needed to have to increase his visitation to two hours per week. The district court changed the primary plan to adoption and the secondary plan to reunification with a parent.

DSS filed a motion to terminate Respondent's parental rights pursuant to N.C.

Gen. Stat. § 7B-1111(a) on 18 March 2022, based upon the following grounds: (1) Respondent's neglect of Eric; (2) Respondent willfully leaving Eric in foster care for more than twelve months without him making reasonable progress in correcting the conditions which led to his removal; and, (3) Respondent failing to pay a reasonable portion of Eric's cost of care for a continuous period of six months preceding the filing of the motion. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3) (2021).

On 24 May 2022, the district court held a hearing on DSS' termination of parental rights motion. DSS Social Worker, Tina Wardlaw, testified Respondent was subject to a child support order and had never made any payments toward that obligation. DSS also offered as an exhibit over objection an Affidavit of Arrears from the Child Support Enforcement Unit. Respondent only testified during the dispositional phase.

On 20 July 2022, the district court entered an order terminating Respondent's parental rights. The court found clear, cogent and convincing evidence of the three grounds, as alleged by DSS in its motion. The district court also concluded that termination of Respondent's parental rights was in Eric's best interests. Respondent appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021).

III. Termination of Respondent's Parental Rights

A. Standard of Review

We review an adjudication order “to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

B. Analysis

“Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796–97 (2020) (citing N.C. Gen. Stat. §§ 7B-1109, -1110 (2019)).

At the adjudicatory stage, the petitioner bears the burden of proving by “clear, cogent, and convincing evidence” the existence of one or more grounds for termination under N.C. Gen. Stat. § 7B-1111(a). N.C. Gen. Stat. § 7B-1109(f) (2021). A trial court may terminate parental rights if one or more grounds are found. The reviewing court may affirm a termination decision if any termination ground is supported by findings of fact based on clear, cogent, and convincing evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 132–33 (1982).

Respondent argues the trial court erred in terminating his parental rights of

the basis of: (1) neglect; (2) willfully leaving Eric in foster care without remedying the conditions leading to his removal; and, (3) willfully failing to pay a reasonable portion of Eric's cost of care during the six months preceding the filing of the termination motion.

We initially review the district court's determination that Respondent's rights were subject to termination based upon failure to pay a reasonable portion of Eric's cost of care. N.C. Gen. Stat. § 7B-1111(a)(3) provides that parental rights may be terminated if:

[a] juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3)(2021).

To support this ground, a district court is required to make a finding the "parent has [the] ability to pay support[.]" *In re Ballard*, 311 N.C. 708, 716–17, 319 S.E.2d 227, 233 (1984). "Although what is within a parent's ability to pay or what is within the means of a parent to pay is a difficult standard which requires great flexibility in its application, the requirement of N.C. Gen. Stat. § 7B-1111(A)(3) applies irrespective of the parent's wealth or poverty." *In re T.D.P.*, 164 N.C. App. 287, 290, 595 S.E.2d 735, 738 (2004) (citation and quotation marks omitted).

Here, the district court made the following findings of fact:

34. [Respondent] has not obtained and maintained stable employment. He has been unemployed for the entire time [Eric] has been in [DSS'] care.

...

38. [Respondent] has not provided consistent financial support for the minor child since he was placed in the Department's custody. [Respondent] has not provided any financial payments or material good[s] for the benefit of the minor child. The minor child's monthly board rate is \$541.00 per month. [Respondent] has no known disability that prevents him from obtaining and maintaining employment to pay a reasonable portion of the child's cost of care.

...

43. [Eric] ha[s] been placed in the custody of the Department of Social Services and [Respondent], for a continuous period of six months next preceding the filing of this [termination of parental rights] Motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the minor child although physically and financially able to do so.

The district court also concluded as a matter of law: “[Respondent] has for a continuous period of six (6) months next preceding the filing of this Motion, . . . willfully failed for such period to pay a reasonable portion of the cost of care for the minor child although physically and financially able to do so, as defined in N.C.G.S. 7B-1111(a)(3).”

Respondent challenges findings of fact 38 and 43 and contends the trial court never identified the relevant statutory “continuous period of six-months” as being 18

September 2021 to 18 March 2022. Respondent also argues DSS never presented clear, cogent, and convincing evidence of a child support order being entered in this case.

Respondent is correct that requires findings under this ground to be tailored to the relevant statutory period. However, while the trial court did not identify the relevant statutory period by stating a date, the relevant statutory period is the six months preceding the filing of the termination of parental rights motion, which is supported by the trial court's inclusion of the language of Section 7B-1111(a)(3) in its finding of fact # 43 and conclusion of law # 7.

Respondent's challenge relies upon *In re Z.G.J.*, 378 N.C. 500, 862 S.E.2d 180, (2021) and *In re K.H.*, 375 N.C. 610, 616–17, 849 S.E.2d 856, 861–62 (2020), cases wherein the trial courts' findings indicated the parents had been sporadically employed throughout the pendency of the cases. *In re Z.G.J.*, 378 N.C. at 513, 862 S.E.2d at 190; *In re K.H.*, 375 N.C. at 616–17, 849 S.E.2d at 861–62.

Here, the trial court found that Respondent had not provided “*any* financial payments or material good[s]” the *entire time* Eric was in foster care, which necessarily includes the relevant six-month statutory period. (emphasis supplied). This finding is supported by DSS Social Worker Wardlaw's testimony asserting Respondent had never made any payment toward his child support obligation.

Respondent next contends that “[n]othing in the record confirms the existence” of a child support order, and therefore it was “impossible to determine with specificity

when and how the court established the obligation.” Evidence in the record supports the existence of a valid child support order, even though the order itself was not introduced into evidence.

DSS Social Worker Wardlaw testified Respondent was subject to a child support order of \$50 per month and had never made any payment. Further, an Affidavit of Arrears is included in the record reflecting Respondent owed payments in arrears in the amount of \$350 as of 24 May 2022. This evidence, while competent, does not establish when the child support order went into effect.

Our Supreme Court stated: “The absence of a court order, notice, or knowledge of a requirement to pay support is not a defense to a parent’s obligation to pay reasonable costs, because parents have an inherent duty to support their children.” *In re D.C.*, 378 N.C. 556, 561, 862 S.E.2d 614, 617 (2021) (citing *In re S.E.*, 373 N.C. 360, 366, 838 S.E.2d 328, 333 (2020)). Our Courts have not required the initiation of a child support case in order to terminate parental rights for “failure to pay a reasonable portion of the cost of care” pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). *See, e.g., Id.; In re S.E.*, 373 N.C. 360, 366, 838 S.E.2d 328, 332 (2020).

The trial court’s finding of fact 38 states: “[Respondent] has no known disability that prevents him from obtaining and maintaining employment to pay a reasonable portion of the child’s cost of care.” Findings of fact 38 and 43 are supported by DSS Social Worker Wardlaw’s testimony. In challenging finding of fact 38, Respondent asserts only that the trial court failed to identify the relevant six-month

statutory period, but he does not challenge the finding he had paid nothing at any time towards Eric's cost of care. We reject Respondent's argument, asserting his testimony during a disposition creates a conflict in the evidence, as disposition evidence cannot be used to support adjudicatory findings. *See In re Z.J.W.*, 376 N.C. 760, 772–73, 855 S.E.2d 142, 152 (2021).

Despite having the ability to pay some amount towards Eric's care, Respondent provided no financial support for the entire time Eric was in DSS' custody, including during the relevant statutory six-month period. The trial court's findings are supported by clear, cogent, and convincing evidence. These findings support the trial court's conclusion of law #7, decreeing Respondent had willfully failed to pay a reasonable portion of the cost of care of the juvenile, even though physically and financially able to do so.

The trial court's adjudication of grounds to terminate Respondent's parental rights to the care, custody, and control of Eric pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) is affirmed. *See, e.g., In re J.A.E.W.*, 375 N.C. 112, 118, 846 S.E.2d 268, 272 (2020) (upholding an adjudication under (a)(3) when the respondent-father "was able to pay some amount greater than zero, and it is undisputed that he failed to do so."). We decline to address Respondent's arguments challenging the remaining termination grounds found by the trial court, as we have concluded one termination ground is supported. *See In re Moore*, 306 N.C. at 404, 293 S.E.2d at 133.

IV. Conclusion

IN RE: E.I.H.

Opinion of the Court

The trial court's findings of fact support its determination that Respondent's parental rights were subject to termination based on the ground of N.C. Gen. Stat. § 7B-1111(a)(3). Respondent does not challenge the ultimate conclusion that termination of his parental rights is in Eric's best interest. We affirm the trial court's order. *It is so ordered.*

AFFIRMED.

Judges FLOOD and RIGGS concur.

Report per Rule 30(e).