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NO. COA09-534

NORTH CAROLINA COURT OF APPEALS

Filed: 1 September 2009

IN THE MATTER OF:

R.A.L.R.

Catawba County  
No. 07 JT 70-72

Appeal by respondent-father from order entered 4 March 2009 by Judge C. Thomas Edwards in Catawba County District Court. Heard in the Court of Appeals 10 August 2009.

*Lauren Vaughn, for petitioner-appellee Catawba County Department of Social Services.*

*Pamela Newell Williams, for Guardian ad Litem.*

*Richard Croutharmel, for respondent-appellant father.*

JACKSON, Judge.

Remone R. ("respondent") appeals from the trial court's 4 March 2009 order terminating his parental rights to juvenile R.A.L.R. Respondent challenges several of the trial court's findings of fact and its conclusion that grounds existed to terminate his parental rights, and he contends that the trial court abused its discretion when it entered the order terminating his parental rights. For the reasons set forth below, we affirm the trial court's order terminating respondent's parental rights.

The Catawba County Department of Social Services ("DSS") first became involved with the family due to a 9 April 2003 report that R.A.L.R.'s mother had attempted suicide. Throughout 2004 and 2005, DSS received reports that the mother was abusing drugs and alcohol and that the home was dirty. R.A.L.R. witnessed domestic violence involving the mother and one of the mother's boyfriends in September 2006. During this time, respondent was incarcerated for assault with a deadly weapon inflicting serious injury and was not contributing to juvenile's well-being.

On 23 February 2007, DSS filed a petition alleging that juvenile was neglected and dependent; the petition was based, in part, upon respondent's failure to contribute to juvenile's well-being. On 9 July 2007, the trial court entered an order in which it adjudicated juvenile neglected and dependent and awarded DSS custody and placement authority. The trial court ordered respondent to enter into and comply with a family services case plan in order for respondent to be considered as a caretaker for juvenile.

In April 2007, respondent was released from prison, but he was arrested again on 22 October 2007. Respondent visited juvenile twice during the period when he was not incarcerated. On 5 March 2008, the trial court entered an order in which it set forth juvenile's permanent plan as a concurrent plan of adoption and reunification, and again ordered respondent to enter into a family services case plan. Respondent was released from jail again in March 2008, and on 14 May 2008, the trial court entered an order

changing juvenile's permanent plan to adoption. On 1 April 2008, respondent entered into a case plan that addressed substance abuse, employment, child support, and domestic violence treatment. Respondent failed to achieve any of the goals outlined in the case plan.

On 3 July 2008, DSS filed a motion to terminate respondent's parental rights. DSS alleged two grounds for termination: (1) that juvenile was neglected, and (2) that juvenile was placed in DSS custody for a period of six months prior to the filing of the motion and that respondent willfully had failed to pay a reasonable portion of the costs of care. On 10 February 2009, the case came on for hearing, and, on 4 March 2009, the trial court entered an order terminating respondent's parental rights. During the course of the termination hearing, R.A.L.R.'s mother voluntarily relinquished her parental rights. Respondent's social worker testified, *inter alia*, that respondent admitted that he used marijuana and would test positive on a drug screen. As grounds for termination, the trial court concluded that R.A.L.R. was neglected pursuant to North Carolina General Statutes, sections 7B-1111(a)(1) and 7B-101. Respondent appeals.

Respondent argues that (1) several of the trial court's findings of fact and its conclusion that grounds existed to terminate his parental rights are not supported by the evidence, and (2) the trial court abused its discretion when it terminated his parental rights. We disagree.

In the adjudicatory stage, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109(f) (2007); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Review in the appellate courts is limited to determining whether clear, cogent, and convincing evidence exists to support the findings of fact and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. rev. denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). Unchallenged findings of fact are binding on appeal. *In re S.D.J.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 665 S.E.2d 818, 824 (2007) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("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.")).

Once the trial court determines that a ground for termination exists, it moves on to the dispositional stage, when it must determine whether termination is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2007). The court's decision at this stage is reviewed for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

In determining the best interests of the child, the court must consider:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.

(3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.

(4) The bond between the juvenile and the parent.

(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.

(6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2007).

In this case, the only ground for termination found by the trial court was neglect, pursuant to North Carolina General Statutes, section 7B-1111(a)(1). A neglected juvenile is one

who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2007).

Respondent challenges only findings of fact numbered 9, 30, 31, 33, 35, 38, and 40. Notwithstanding respondent's challenges, the trial court made numerous unchallenged findings of fact. Among these, the trial court found

27. R.[A.L.]R. is currently eight years and nine months old. During the period of her entire life, her father[,] Remone R[.], has been incarcerated for a total of eight years and one month, or approximately ninety-five per cent (95%) of the minor child's life.

. . . .

29. During one of [respondent's] periods of release, a substance abuse assessment was scheduled for him pursuant to his case plan. [Respondent] did not attend that assessment, even though he was not incarcerated at the time of the appointment.

. . . .

32. [Respondent] has acknowledged to his social worker, Mr. Turner[,] during August 2007 and again in the Spring of 2008, when he was not incarcerated, that he would test positive for marijuana if screened.

. . . .

34. During his brief period of not being incarcerated in the Spring of 2008, [respondent] was residing in the home of his friend[,] Erin Fritz[,] when someone shot into the residence.

. . . .

37. With regard to completing the terms of his case plan, [respondent] reported, "I was planning on going to the classes and taking the classes [the social worker] asked me to take for my daughter. But like I said, things just ain't worked out as I planned."

The trial court's unchallenged findings support its conclusion that juvenile was neglected. Respondent failed to attend substance abuse assessments, and he admitted that he was using drugs when he was out of prison. Respondent also acknowledged that he failed to complete parenting classes. Furthermore, someone shot into his friend's home where he was residing during a brief time out of prison. Given respondent's lengthy criminal history, reluctance to seek treatment for his drug and parenting problems, and the unsafe residence at which he chose to stay when out of prison, we agree

with the trial court's conclusion that respondent's neglect of R.A.L.R. likely would continue if returned to respondent's care. See *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) ("The trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect.") Accordingly, we hold that the trial court's unchallenged findings of fact support its conclusion that juvenile was neglected. See N.C. Gen. Stat. § 7B-1111(a)(1) (2007); *In re S.D.J.*, \_\_\_ N.C. App. at \_\_\_, 665 S.E.2d at 824.

At the disposition stage, the trial court acted within its discretion in terminating respondent's parental rights. The trial court's findings of fact specifically addressed the relevant factors set forth in North Carolina General Statutes, section 7B-1110(a). In its disposition findings, the trial court demonstrated that it considered R.A.L.R.'s age, the damaged nature of juvenile's relationship with respondent due to respondent's frequent incarceration, the benefit that termination would provide in achieving the permanent plan of adoption, and the likelihood that juvenile could be placed for adoption. See N.C. Gen. Stat. § 7B-1110(a) (2007).

Accordingly, we affirm the trial court's order terminating respondent's parental rights.

Affirmed.

Judges MCGEE and CALABRIA concur.

Report per Rule 30(e).