NO. COA11-378
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF:

J.E. Wake County
No. 09 JT 124

Appeal by respondent father from order entered 5 January 2011 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 15 August 2011.

Office of the Wake County Attorney, by Deputy County Attorney Roger A. Askew, for petitioner-appellee Wake County Human Services.

Pamela Newell for guardian ad litem.

Richard E. Jester for respondent-appellant father.

MARTIN, Chief Judge.

Respondent father appeals from the order terminating his parental rights to his daughter, J.E. Respondent father argues the trial court erroneously admitted hearsay evidence and the evidence does not support the findings of fact or conclusions of

law in the order terminating his parental rights. We affirm the order terminating respondent father's parental rights.

Wake County Human Services ("WCHS") first became involved with J.E.'s family in 2003, because of a report that her half-sister, A.J., failed to thrive.[1] On 29 July 2008, respondent father was convicted of taking indecent liberties with a minor, resulting in his registration as a sex offender. On 16 January 2009, WCHS received a report that respondent father had sexually abused the half-sister, A.J. Reports in April and May of 2009 further alleged that A.J. suffered from improper care, including poor hygiene, and that she missed doctor's appointments and was unable to stay awake in school. In addition to these reports specific to A.J., the juvenile in this case, J.E., disclosed that respondent father and respondent mother engaged in incidents of domestic violence and sexual conduct in front of both of the children, that respondent mother pulled the children's hair and berated them, and that respondent father had sexually abused her.

On 1 May 2009, J.E. was placed in the home of her maternal grandmother. Two weeks later, she was removed from that home and placed with her paternal grandparents. On 21 May 2009, WCHS

[1] A.J. has a different biological father than J.E., and was later placed with her biological father.

discovered that respondent father's brother, who also lived with the paternal grandparents, had recently been found responsible for sexually abusing a seven-year-old cousin, and determined the paternal grandparents' home was an unsuitable placement.

On 22 May 2009, WCHS filed a petition alleging that both J.E. and A.J. were neglected, and obtained non-secure custody. J.E. was placed in foster care at that time. On 26 May 2009, WCHS entered into a memorandum of understanding with respondent father and respondent mother, which included requirements that respondent father obtain evaluations and treatment.

On 12 July 2009, WCHS filed a second petition alleging that J.E. and A.J. were abused and neglected. On 12 August 2009, the trial court entered a consent order adjudicating the two children to be abused and neglected. J.E. remained in the custody of WCHS, and respondent father was ordered to enter into and comply with an out-of-home family services agreement with WCHS. The parties, including respondent father, consented to the court's findings of fact and conclusions of law, and respondent father and his attorney each signed the consent order.

As part of that order, the court, "[h]aving reviewed this written proposed Consent Order and questioned under oath each parent who has signed this proposal," found:

> a. Each signing parent acknowledges in open court having read the document and reviewed its contents with the attorney representing the parent in this matter.
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> . . .
>
> d. Each signing parent acknowledges in open court that the parent understands that the findings of fact, conclusions of law, and adjudication contained in this order are binding to the same extent as if there had been a full hearing on this matter.

On 30 April 2010, the court entered an order changing the permanent plan for J.E. to adoption. At this time, respondent father was incarcerated awaiting trial on charges of first-degree rape of a child involving J.E. and another of his children from a prior relationship and J.E. continued to make disclosures to her therapist that respondent-father had sexually abused her.

On 16 September 2010, WCHS filed a motion to terminate the parental rights of respondent father and respondent mother. WCHS alleged that both respondents abused and neglected J.E. and had willfully left her in foster care for more than twelve months without making reasonable progress toward correcting the

conditions that led to her removal from their care, pursuant to N.C.G.S. § 7B-1111(a)(1-2) (2009). WCHS also alleged an additional ground only as to respondent mother.

The matter came on for a termination of parental rights hearing on 3 December 2010 before Judge Bousman. Respondent mother voluntarily relinquished her parental rights on the morning of the hearing. Social workers Erin Lanier and Linda Clements testified at the hearing, as did the juvenile's guardian ad litem. On 5 January 2011, the trial court entered an order in which it concluded grounds existed to terminate respondent father's parental rights, and that it was in J.E.'s best interest to terminate respondent father's parental rights. Respondent father entered written notice of appeal.

Respondent father first argues that the trial court erroneously admitted hearsay evidence. We hold that respondent father failed to preserve this argument for appeal.

Our appellate rules describe the steps necessary to preserve an issue for appellate review:

> 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 the court to make if the specific grounds were not apparent

> from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C.R. App. P. 10(a)(1).

In this case, the trial court and counsel for respondent father had the following exchange when Ms. Lanier began to describe prior petitions and court reports during her testimony:

> FEMALE SPEAKER: I'm going to object if this is being used in any way for hearsay. If it's not, I'll withdraw the objection.
>
> TRIAL COURT: The only reason this will be used is for the report, not for what was proven at trial. Which I believe there was not a trial –
>
> . . . .
>
> TRIAL COURT: There was a consent order. This is only being used for purposes -- for it's [sic] non-hearsay value.
>
> FEMALE SPEAKER: Okay, thank you.

Respondent father did not object further to Ms. Lanier's testimony. Based on this exchange, it is apparent that Ms. Lanier's testimony was admitted for non-hearsay purposes and respondent father withdrew his objection. Given that respondent father withdrew his objection without obtaining a ruling, we hold that he has waived his right to appellate review of this issue. *See Walden v. Morgan*, 179 N.C. App. 673, 678, 635 S.E.2d

616, 620 (2006) (argument dismissed when party failed to obtain a ruling on its objection).

Respondent father's remaining argument is that several of the trial court's findings of fact are not supported by adequate evidence and do not support the conclusion that grounds existed to terminate his parental rights. We disagree.

At the adjudicatory stage of a termination of parental rights hearing, 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) (2009); *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 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*, *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

The trial court concluded grounds existed pursuant to both N.C.G.S. § 7B-1111(a)(1) and N.C.G.S. § 7B-1111(a)(2) to terminate respondent father's parental rights. However, we find it dispositive that the evidence supports termination of his parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), because

the court properly concluded the juvenile was abused. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (a finding of one statutory ground is sufficient to support the termination of parental rights).

The statutory definition of an abused juvenile includes any juvenile whose parent, guardian, or other caretaker commits one of several enumerated sexual crimes against her, including first-degree rape and rape of a child. N.C. Gen. Stat. § 7B-101(1)(d) (2009). A prior adjudication of abuse may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of abuse. *See In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984) (stating same where ground for termination was neglect). Termination of parental rights, however, may not be based solely upon a prior adjudication.

> For the trial court to decide, following a termination of parental rights hearing, that a child is abused, the court 'must admit and consider all evidence of relevant circumstances or events which existed or occurred before the adjudication of abuse, as well as any evidence of changed conditions in light of the evidence of prior abuse and the probability of a repetition of that abuse.'

In re L.C., 181 N.C. App. 278, 285, 638 S.E.2d 638, 642-43 (citation omitted), *disc. review denied*, 361 N.C. 354, 646

S.E.2d 114 (2007). Thus, where there is no evidence of abuse at the time of the termination proceeding, parental rights may be terminated if there is a showing of a past adjudication of abuse and the trial court finds by clear and convincing evidence that there is a probability of repetition of abuse if the juvenile was returned to her parents. *See In re Reyes*, 136 N.C. App. 812, 814-15, 526 S.E.2d 499, 501 (2000) (citation omitted) (stating same where ground for termination was neglect).

In this case, J.E. had previously been adjudicated abused in the 12 August 2009 consent order, and the trial court took judicial notice, without objection, of the prior orders entered in the matter. The court also made numerous findings of fact establishing the history of abuse and the likelihood of repetition, including:

> 15. That [respondent father] was arrested on August 13, 2009 and charged with First-Degree Rape of a Child. The victim in that case is [J.E.]. The charges are still pending.
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> 16. That [respondent father] has a second pending charge alleging a sexual offense against another child. That victim is another child of [respondent father's].
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> . . . .
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> 26. That [respondent father] has accepted no responsibility for the conditions from which [J.E.] was removed. [Respondent

> father] has placed all blame for [J.E.'s] circumstances on her mother.
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> . . . .
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> 39. That the sexual abuse [J.E.] endured was at the hands of her father.
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> . . . .
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> 45. That the conduct of [respondent father] has been such as to demonstrate that he will not promote the healthy and orderly, physical and emotional well being [sic] of the child.

"'[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them.'" *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (quoting *Hunt v. Hunt*, 85 N.C. App. 484, 488, 355 S.E.2d 519, 521 (1987)). "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." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Although respondent father generally contends in his appellate brief that "all of the evidence of abuse in this case is hearsay," he has not specifically challenged the sufficiency of the evidence to support any of the findings of fact cited herein. Accordingly, given that the adjudication findings are supported by the evidence, we hold that these findings are

binding on appeal. Because the findings of fact establish that respondent father abused J.E. and that the abuse would likely continue if she was returned to respondent father's care, we hold that the trial court properly concluded that J.E. was abused, and affirm the order terminating respondent father's parental rights.

Affirmed.

Judges ERVIN and THIGPEN concur.

Report per Rule 30(e).