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NO. COA12-232
NORTH CAROLINA COURT OF APPEALS

Filed: 2 October 2012

IN THE MATTER OF:

S.R.G. and Z.R.G.

Catawba County
Nos. 10 JT 246-47

Appeal by respondent from order entered 20 December 2011 by Judge Robert M. Brady in Catawba County District Court. Heard in the Court of Appeals 4 September 2012.

J. David Abernethy for petitioner-appellee Catawba County Department of Social Services.

J. Thomas Diepenbrock for respondent-appellant mother.

Alston & Bird LLP, by Heather Adams and Anitra Goodman Royster, for the guardian ad litem.

BRYANT, Judge.

Where the trial court found that respondent lacked an appropriate alternative child care arrangement, we affirm the trial court's order terminating respondent's parental rights to Sally and Zeke.¹

¹ Pseudonyms have been used to protect the juveniles' identities.

On 29 November 2010, the Catawba County Department of Social Services ("petitioner") filed in Catawba County District Court a petition alleging that Sally and Zeke ("juveniles" or "children") were abused, neglected, and dependent juveniles and took non-secure custody of the juveniles pursuant to court order. On 4 January 2011, petitioner filed a second petition alleging that Zeke was an abused juvenile and that both children were neglected and dependent juveniles. Following a hearing on 14 March 2011, the trial court entered a consolidated order of adjudication and disposition concluding that Zeke was an abused juvenile and that both children were neglected and dependent juveniles. The court directed the petitioner to make reasonable efforts to reunify the juveniles with respondent and eliminate the need for placement outside of respondent's home. But, by order entered 30 June 2011, following a hearing during the 5 June 2011 juvenile session, the trial court ordered petitioner to cease those efforts. In the 30 June 2011 order, the court acknowledged that respondent "reserves the right of future appeal from this order."

On 9 August 2011, petitioner filed a motion to terminate respondent's parental rights to the juveniles. Petitioner alleged that respondent neglected the juveniles and was

incapable of providing for their proper care and supervision such that they were dependent juveniles. On 20 December 2011, following hearings on 24 October and 21 November 2011, the trial court entered a consolidated judgment and order of adjudication and disposition in termination of parental rights terminating respondent's parental rights to the juveniles on the grounds of neglect and dependency. Respondent filed timely notice of appeal from the 20 December 2011 order terminating her parental rights.

Respondent raises three questions on appeal: whether the trial court erred in (I) ordering that reunification efforts be ceased; (II) concluding that respondent lacked an alternative appropriate child care arrangement; and (III) concluding that the juveniles were neglected juveniles.

I

Respondent first argues the trial court erred in ordering that reunification efforts be ceased in its 30 June 2011 review order. We dismiss this argument.

Before we consider the merits of respondent's issue, we must determine whether her argument is properly before this Court.

"At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001." N.C. Gen. Stat. § 7B-507(c) (2011). Pursuant to G.S. § 7B-1001,

[from] [a]n order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection . . . [t]he Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if . . . [t]he order to cease reunification is identified as an issue in the record on appeal of the termination of parental rights.

N.C. Gen. Stat. § 7B-1001(a)(5)(a.) (3) (2011); *see also* N.C. R. App. P. 3.1(a) ("Any party entitled by law to appeal from a trial court judgment or order rendered in a case involving termination of parental rights and issues of juvenile dependency or juvenile abuse and/or neglect, appealable pursuant to N.C.G.S. § 7B-1001, may take appeal by filing notice of appeal . . .").

In her notice of appeal, respondent does not identify the 30 June 2011 order to cease reunification as an issue to be considered on appeal. Having failed to appeal the 30 June 2011 order pursuant to N.C.G.S. § 7B-1001 and Rule 3.1(a), respondent, on 10 April and 19 April 2012, filed with this Court

a petition and a motion to file an amended petition for a writ of certiorari, respectively. We deny respondent's 10 April 2012 petition as it is unverified. See N.C. R. App. P. 21(c) ("The petition [for writ of certiorari] shall be verified by counsel or the petitioner."). We allow respondent's 19 April 2012 motion to file an amended petition and consider whether to grant respondent's petition for writ of certiorari.

A writ of certiorari may be issued "in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action" N.C. R. App. P. 21(a)(1). "A petition for the writ must show merit or that error was probably committed below. *Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959).

Here, respondent presents two grounds for her argument that the trial court erred in ordering that reunification efforts be ceased: respondent challenges the trial court's conclusions that (1) further reunification efforts would be futile and inconsistent with the juveniles' health, safety, and need for a permanent home; and (2) petitioner exercised reasonable efforts

to reunify and prevent or eliminate the need for placement of the children.

Initially, we note that respondent does not contest evidentiary admissions made during the review hearing held during the 5 June 2011 juvenile session - the hearing upon which the trial court based its order ceasing reunification efforts with respondent. Therefore, the trial court's findings of fact are unchallenged and deemed binding. *Peters v. Pennington*, ___ N.C. App. ___, ___, 707 S.E.2d 724, 733 (2011) ("Unchallenged findings of fact are binding on appeal." (citation omitted)). Because the evidentiary basis for the findings of fact renders them binding, respondent will be unable to support the contentions contained in the petition for writ of certiorari. Accordingly, we deny respondent's petition for writ of certiorari. See *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9.

II

Respondent next argues the trial court erred in concluding grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), "[t]hat the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile" We disagree.

"On appeal, our standard of review for the termination of parental rights is whether the trial court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation omitted).

Pursuant to North Carolina General Statutes, section 7B-1111(a)(6), a trial court may terminate parental rights when:

[T]he parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and *the parent lacks an appropriate alternative child care arrangement.*

N.C. Gen. Stat. § 7B-1111(a)(6) (2011). Respondent does not contest the trial court's conclusion that the juvenile is a dependent juvenile within the meaning of N.C. Gen. Stat. § 7B-101, and only argues the court erred because it did not adequately find she lacked an appropriate alternative child care arrangement.

The trial court found that respondent "lacks an appropriate alternative child care arrangement; the arrangements she has made have resulted in abuse of the children." Respondent contends this finding is a mere conclusory statement that was not made through logical reasoning from the evidentiary facts. Respondent also argues, for the first time on appeal, that a prior home study had approved her first-cousin and his wife as a possible placement for the juveniles. But, this Court has "consistently held that in order for a parent to have an appropriate alternative child care arrangement, the parent must have taken some action to identify viable alternatives." *In re L.H.*, ___ N.C. App. ___, ___, 708 S.E.2d 191, 197 (2011) (citing *In re J.D.L.*, 199 N.C. App. 182, 189, 681 S.E.2d 485, 490 (2009); *In re J.L.*, 183 N.C. App. 126, 130, 643 S.E.2d 604, 606 (2007); and *In re D.J.D.*, 171 N.C. App. 230, 239, 615 S.E.2d 26, 32 (2005)). At the hearing to terminate her parental rights, respondent did not present any evidence regarding an alternative child care arrangement, and there was no evidence that respondent's first-cousin continued to agree to be considered a placement option for the juveniles. Respondent does not contest the trial court's finding that the child care arrangements she has made in the past have resulted in the abuse of the juveniles

and, thus, that finding is binding on appeal. See *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Accordingly, we hold the trial court's finding that respondent lacks an appropriate alternative child care arrangement is supported by the evidence, and the court's findings in turn supports its conclusion that grounds exist to terminate respondent's parental rights pursuant to section 7B-1111(a)(6).

Because we hold the trial court did not err in concluding that grounds exist to terminate respondent's parental rights pursuant to section 7B-1111(a)(6), we do not address respondent's arguments regarding the court's conclusions that grounds also existed to terminate her parental rights under section 7B-1111(a)(1). *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) ("[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." (citation and quotations omitted)), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). We therefore find no error in the trial court's order terminating respondent's parental rights to the juveniles Sally and Zeke.

Affirmed.

Judges HUNTER, Jr., Robert N., and BEASLEY concur.

Report per Rule 30(e).