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NO. COA13-225
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

IN THE MATTER OF:

New Hanover County
Nos. 11 JT 131-35

S.E.A., III, S.E.A.,
S.E.A., S.E.A., S.E.A.

Appeal by father from orders entered 22 March 2012 and 26 October 2012 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 15 July 2013.

Gail Carelli for New Hanover County Department of Social Services, petitioner-appellee.

Wyrick Robbins Yates & Ponton LLP, by Tobias S. Hampson, for father-appellant.

Parker, Poe, Adams & Bernstein L.L.P., by Mary Katherine H. Stukes, for guardian ad litem.

STEELMAN, Judge.

The trial court did not err in ceasing reunification efforts when it made findings of fact concerning the relevant criteria set forth in N.C. Gen. Stat. § 7B-907. Where father willfully left the juveniles in foster care for more than twelve months and failed to make reasonable progress to correct the

conditions that led to the removal of the juveniles, the trial court properly found that grounds existed to terminate his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). The trial court did not abuse its discretion when it determined that it was in the juveniles' best interests to terminate father's parental rights.

I. Factual and Procedural Background

On 11 May 2011, the New Hanover County Department of Social Services (DSS) filed a petition alleging that S.E.A.(2) was a neglected juvenile. DSS stated that S.E.A.(2) and her twin sister, S.E.A.(3), were born prematurely in 2008 and were hospitalized for three months after their birth. DSS asserted that:

The family was given specific discharge instructions that involved followup medical care, including the directive to take [S.E.A.(2)] to an eye clinic and to a special needs infant clinic. None of these instructions were followed, and the child did not receive any medical care until January 2010. She has had only sporadic medical care since. None of [father's] children are up to date on immunizations or well-child checkups. While the other children in the home appear to be healthy, [S.E.A.(2)] weighs only 13 lbs. She was admitted to New Hanover Regional Medical Center (NHRMC) on May 3, 2011. After being admitted to the hospital, she gained almost 2 pounds in 3 days. Doctors say there is no medical reason for her low weight, and have

diagnosed her with Failure to Thrive. Parents claim that she eats more than the other children. Father has also stated in previous CPS history that when mother is angry, she "takes it out on [S.E.A.(2)]." According to Dr. Adams at NHRMC, it is "obvious this scenario includes horrible neglect" and [S.E.A.(2)] is at risk for cardiac and renal failure. Hospital workers noted during an assessment on May 6th that the child was too weak to perform basic movements; she could not jump, kick a ball two inches, or hold her balance.

DSS obtained non-secure custody of S.E.A.(2).

On 27 July 2011, DSS filed a second juvenile petition alleging neglect, this time concerning all five children of mother and father. DSS stated that it had been involved with father's family since S.E.A.(2) was taken into non-secure custody, and "[i]t has taken the near constant intervention of [DSS] and the Health Department to ensure that the children remaining in the home are receiving the medical care they require." Additionally, DSS expressed concern regarding drug use in the home by their parents and reported an incident where father experienced a seizure while taking mother to the hospital while she was having a miscarriage. Father's mother called 911 and first responders reported that father was "extremely violent, out of control, and aggressive toward police, fire, and EMS personnel, screaming 'I'm gonna kill you' and 'I'm gonna rip

your face off' to them." Father had to be restrained, sedated, and hospitalized. Toxicology reports indicated that father had "cocaine toxicity." Upon release from the hospital, DSS spoke with father and he "presented as paranoid, verbally aggressive, and out of control. He continues to deny drug use and claims he was falsely accused, and that the paramedics and his mother lied about what had happened." DSS obtained non-secure custody of S.E.A.(1), S.E.A.(3), S.E.A.(4), and S.E.A.(5).

On 18 October 2011, the trial court adjudicated the juveniles as neglected pursuant to a consent agreement. On 22 March 2012, the trial court ceased reunification efforts and changed the permanent plan for the juveniles to adoption. Father gave notice to preserve his right to appeal the trial court's order ceasing reunification efforts on 1 May 2012.

On 13 April 2012, DSS filed a petition to terminate the parental rights of mother and father. DSS alleged that grounds existed to terminate father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2) for neglect and willful failure to make reasonable progress. On 26 October 2012, the trial court entered an order terminating father's parental rights after concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2).

Father appeals.¹

II. Cessation of Reunification Efforts

In his first argument on appeal, father contends that the trial court erred when entering its permanency planning order in which it ceased reunification efforts. We disagree.

A. Standard of Review

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007).

B. Relevant Factors under N.C. Gen. Stat. § 7B-907(b)

The purpose of a permanency planning hearing is to "develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-907(a) (2011). To achieve this goal, a trial court may order DSS to cease reunification efforts with a parent pursuant to N.C. Gen. Stat. § 7B-507(b). This statute states:

(b) In any order placing a juvenile in the

¹ Mother signed a relinquishment of her parental rights on 16 July 2012 and is not a party to this appeal.

custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time[.]

N.C. Gen. Stat. § 7B-507(b)(1) (2011).

Here, the trial court specifically found as fact that father had not made sufficient progress such that the juveniles could be returned to his care, either at the time of the hearing or within six months, and that DSS was no longer required to make reasonable efforts towards reunification because "such efforts clearly would be futile and would be inconsistent with the juveniles' health and safety, and need for a safe, permanent home within a reasonable period of time." Father does not contest this finding on appeal and it is binding on this Court. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (holding that unchallenged findings are deemed supported by competent evidence and are binding on appeal).

While father contends that the trial court failed to make

findings required by N.C. Gen. Stat. § 7B-907(b), the trial court is only required to consider the criteria set forth in the statute and to make written findings of fact on any criteria relevant to the case. *In re Harton*, 156 N.C. App. 655, 659, 577 S.E.2d 334, 336-37 (2003). We have stated that “[w]hile it is true that the court is not expressly required to make every finding listed, it must still make those findings that are relevant to the permanency plans being developed for the children.” *In re J.S.*, 165 N.C. App. 509, 512, 598 S.E.2d 658, 660-61 (2004). In other words, the trial court “may not simply recite allegations, but must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law.” *Harton*, 156 N.C. App. at 660, 577 S.E.2d at 337 (quoting *In re Anderson*, 151 N.C. App. 94, 96-97, 564 S.E.2d 599, 600-602 (2002)).

1. Custody with Paternal Grandmother

Father states that the trial court failed to consider the paternal grandmother as a potential placement and make related findings of fact required under N.C. Gen. Stat. § 7B-907(b)(2). N.C. Gen. Stat. § 7B-907(b) requires the trial court, at the conclusion of the hearing, to consider six factors and make written findings of fact regarding those factors that are

relevant. N.C. Gen. Stat. § 7B-907(b) (2011). Father contends that the trial court failed to make findings related to the following factor: "whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents[.]" N.C. Gen. Stat. § 7B-907(b)(2) (2011). The trial court made findings of fact, unchallenged on appeal, that the juveniles were thriving in their placements and had developed strong bonds with their foster parents. Furthermore, the paternal grandmother's home had been the subject of a negative homestudy that found her home to be an inappropriate placement, and it does not appear that any other relative was proposed as a potential placement. These findings of fact demonstrate that the trial court considered the criteria set forth in N.C. Gen. Stat. § 7B-907(b)(2) and "through processes of logical reasoning[.]" the trial court found the ultimate facts essential to support its conclusions of law that reunification efforts should cease. *Harton*, 156 N.C. App. at 660, 577 S.E.2d at 337.

2. Adoption

Father further contends that the trial court erred when it made findings concerning potential adoption of the juveniles.

N.C. Gen. Stat. § 7B-907(b)(3) requires the trial court, when relevant, to consider and make findings regarding "whether adoption should be pursued and if so, any barriers to the juvenile's adoption[.]" N.C. Gen. Stat. § 7B-907(b)(3) (2011). Here, the trial court addressed this requirement by making a finding that the juveniles were placed with persons "committed to adopting them *should they be legally freed for adoption.*" (emphasis added). It can be inferred from this finding that the trial court concluded that adoption should be pursued. Father nevertheless asserts that the trial court erred when it considered unsworn evidence, and then mischaracterized this incompetent evidence when finding that the foster parents were *committed* to adopting the juveniles. However, N.C. Gen. Stat. § 7B-907(b)(3) does not require the trial court to consider the viability of a potential adoptive placement, only whether there are "barriers to the juvenile's adoption." N.C. Gen. Stat. § 7B-907(b)(3) (2011). The trial court's findings that the juveniles were thriving in their foster homes and bonded with their foster families supports an inference that the trial court considered whether adoption should be pursued and whether there were any possible barriers to adoption. Furthermore, Laura Ankrah, the DSS social worker, testified that the juveniles were in

prospective adoptive homes. The trial court's findings of fact support its conclusion of law that adoption is an appropriate permanent placement plan for the juveniles. While the trial court may have overstated its findings by stating that the foster parents were committed to adoption, the trial court's other unchallenged findings of fact nevertheless clearly indicate that the trial court considered whether adoption was appropriate and determined that the only barrier to adoption was that parental rights had not been terminated. Thus, we conclude the trial court did not err in its order ceasing reunification efforts.

This argument is without merit.

III. Termination of Parental Rights

In his second argument, father contends that the trial court erred by concluding that grounds existed to terminate his parental rights. We disagree.

A. Standard of Review

"The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005).

B. Willful Failure to Make Reasonable Progress

In the instant case, the trial court concluded that grounds existed to terminate father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). To terminate a parent's rights under N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must perform a two-part analysis. *In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005). The trial court must determine by clear, cogent, and convincing evidence that: "[1] the child has been willfully left by the parent in foster care or placement outside the home for over twelve months[;] and, further, [(2)] the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child." *Id.*

Here, in its findings of fact in the order terminating father's parental rights, the trial court indicated that the Consent Agreement from the stipulation of the parties on adjudication was accepted into evidence. The stipulation of the parties at adjudication detailed the conditions which led to the removal of the juveniles from father's care. These conditions included S.E.A.(2)'s diagnosis of failure to thrive; concerns regarding father's mental stability and suspected drug use; failure to provide for the juveniles' medical care; and an

incident where father was belligerent and hostile towards EMS responders and had to be medically sedated and hospitalized. To address these issues, in its adjudicatory and dispositional order, the trial court had ordered father to: (1) complete an anger management class and participate in individual therapy and incorporate the skills he has learned in his daily life; (2) participate in substance abuse counseling; (3) follow the recommendations of his psychological evaluation; (4) participate in therapy to address S.E.A.(2)'s failure to thrive diagnosis; (5) submit to random drug screens; (6) demonstrate that he is able to meet the juveniles' needs by attending all medical and educational appointments; and (7) obtain and maintain stable housing and employment. The trial court also provided for father's visitation with the juveniles.

Regarding father's compliance with the trial court's dispositional order, the trial court cited Ankrah's testimony and found as fact:

16. . . . [D]espite numerous attempts to link [father] with services designed to address the issues that led to the removal of his children, [father] failed to follow through with nearly every case plan and court ordered service that [DSS] attempted to engage him in. That referrals were made for individual therapy, parenting classes, and substance abuse services. That [father] failed to participate in any services, and

failed to submit to numerous requested random drug screens. He failed to consistently visit his children. From November 30, 2011, until the date of this hearing, he had one visit with his children, which was in March 2012. . . . He failed to attend a single medical appointment for [S.E.A.(2)], who had over thirty medical appointments in 2011 alone. That [father] continues to blame [DSS] for his situation and has consistently failed to take any responsibility for the conditions that led to the removal of his children from his care. That during the course of these proceedings, [father] and [mother] experienced significant relationship, employment, and housing instability such that they were and continue to be unable to provide a safe and stable home for their children. That despite [father's] statements to Social Worker Ankrah that [he] would not cooperate with [DSS], Social Worker Ankrah made repeated attempts throughout the pendency of these proceedings to engage [father] in needed services, to no avail.

. . . .

18. That [father] has demonstrated to this Court that he is articulate, intelligent, and fully capable of understanding and following the Orders of this Court, however for reasons known only to him, he has chosen not to comply. . . .

Father does not contest these findings and they are therefore binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Based on these findings, the trial court concluded that father had "willfully and not due solely to poverty, left the children in foster care for more than twelve (12) months without

showing to the satisfaction of the Court that reasonable progress under the circumstances has been made to correct the conditions that led to the children's removal." We hold that the trial court did not err by concluding that grounds existed to terminate father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

This argument is without merit.

C. Neglect

Father additionally argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate his parental rights. Because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to support the trial court's order, we need not address the remaining ground found by the trial court to support termination. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (holding that a finding of any one of the separately enumerated grounds is sufficient to support termination).

IV. Best Interests of the Children

In his third argument, father contends that the trial court abused its discretion when it concluded that the termination of his parental rights was in the best interests of the juveniles.

We disagree.

A. Standard of Review

Once statutory grounds for termination have been established, the trial court is required to "determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2011). "We review the trial court's decision to terminate parental rights for abuse of discretion." *Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602.

B. Analysis

In deciding whether termination of parental rights is in the best interests of the juvenile:

[T]he court shall consider the following criteria and make written findings regarding the following that are relevant:

- (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) (2011). The weighing of these factors is the province of the trial court and the court may assign more weight to one or more factors over the others. *In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709-10 (2005), *aff'd per curiam*, 360 N.C. 475, 628 S.E.2d 760 (2006).

Concerning the best interests of the juveniles, the trial court found the following facts:

21. . . . [S.E.A.(1)] and [S.E.A.(4)] are residing in licensed foster homes in Wayne County, North Carolina; [S.E.A.(2), S.E.A.(3), and S.E.A.(5)] are all residing in licensed foster homes in New Hanover County, North Carolina. Their likelihood of adoption is strong, considering that they are all in stable residences with foster parents who wish to adopt them and with whom they all have a strong and supportive relationship; termination of parental rights will aid in the accomplishment of the permanent plan of adoption for all of them. What little bond existed between [father] and his children has been irreparably harmed by his failure to visit them consistently, or be present at any medical appointments with them for over fourteen months.

22. Blair Both, Volunteer Guardian ad Litem testified and the Court found as fact that she has been working with the family since May 2011. That the children have been in the same foster homes since their respective placements into foster care, that they are bonded to their respective foster parents, and need permanence in their lives. It would

be in the children's best interest that the Termination of Parental Rights be granted and the permanent plan for the children should be adoption. . . .

The trial court's written findings of fact demonstrate that it sufficiently considered the relevant factors enunciated in N.C. Gen. Stat. § 7B-1110(a). Father contends that there was insufficient evidence to support the trial court's findings of fact concerning the likelihood of adoption in this matter. The guardian ad litem's report to the trial court, which was accepted into evidence and considered by the trial court, specifically stated that the likelihood of adoption "is very high since all three foster families have expressed a strong desire to adopt." The guardian ad litem also testified at the termination hearing that the juveniles were all in pre-adoptive placements. Based on this evidence and the court's dispositional findings of fact, we conclude that the trial court's determination that it was in the juveniles' best interests to terminate father's parental rights was not manifestly unsupported by reason.

This argument is without merit. The decision of the trial court is affirmed.

AFFIRMED.

Chief Judge MARTIN and Judge DILLON concur.

Report per Rule 30(e).