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NO. COA13-582  
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

IN RE:

S.E.W.

Wake County  
No. 10 JT 149

Appeal by Father from order entered 13 February 2013 by Judge Monica M. Bousman in District Court, Wake County. Heard in the Court of Appeals 8 October 2013.

*Hunt Law Group, P.C., by James A. Hunt, for Petitioner-Appellee Mother.*

*Wyrick Robbins Yates & Ponton, LLP, by Tobias S. Hampson, for Respondent-Appellant Father.*

McGEE, Judge.

Father appeals from an order terminating his parental rights to the minor child, S.E.W.

I. Background

S.E.W., at six weeks of age, was admitted to Wake Medical Center with an acute fracture to her left tibia "caused from blunt force trauma[.]" S.E.W. also had fractures to her right

tibia and left femur, multiple fractures in both knees, and two fractured right ribs, all in various stages of healing. The trial court adjudicated S.E.W. abused and neglected on 14 July 2010. The trial court awarded custody to Mother on 20 July 2011.

Noting that Father was "awaiting trial for felony child abuse," the trial court ordered that Father "shall not have contact with [S.E.W.] until further orders of this [c]ourt upon a motion filed by [Father] to establish visitation." A jury found Father guilty of intentional child abuse inflicting serious physical injury upon S.E.W., in violation of N.C. Gen. Stat. § 14-318.4(a), on 4 August 2011. *State v. Webb*, \_\_\_ N.C. App. \_\_\_, 725 S.E.2d 923 (5 June 2012) (unpublished) (COA12-88), *disc. review denied*, 366 N.C. 245, 731 S.E.2d 169 (2012).

Mother filed a petition to terminate Father's parental rights, alleging four grounds: (1) abuse or neglect; (2) failure to establish paternity; (3) willful abandonment; and (4) committing "a felony assault that result[ed] in serious bodily injury to the child[.]" See N.C. Gen. Stat. § 7B-1111(a)(1), (5), (7), (8) (2011). Father filed no response. The trial court concluded that the following grounds existed to terminate Father's parental rights: abuse and neglect; and

felony assault resulting in serious bodily injury to S.E.W. The trial court concluded that S.E.W.'s best interests would be served by terminating Father's parental rights.

## II. Standard of Review

"Termination of parental rights is a two-step process." *In re S.N., X.Z.*, 194 N.C. App. 142, 145, 669 S.E.2d 55, 58 (2008), *aff'd*, 363 N.C. 368, 677 S.E.2d 455 (2009) (per curiam). First, "the petitioner must show by clear, cogent and convincing evidence that a statutory ground to terminate exists." *Id.* at 145-46, 669 S.E.2d at 58. "The trial court must make findings of fact which are supported by this evidentiary standard, and the findings of fact must support the trial court's conclusions of law." *Id.* at 146, 669 S.E.2d at 58. "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re P.O.*, 207 N.C. App. 35, 41, 698 S.E.2d 525, 530 (2010).

"Once the trial court has found a ground for termination, the court then considers the best interests of the child in making its decision on whether to terminate parental rights." *In re S.N., X.Z.*, 194 N.C. App. at 146, 669 S.E.2d at 59. "We review this decision on an abuse of discretion standard, and will reverse a court's decision only where it is manifestly

unsupported by reason.” *Id.* (internal quotation marks omitted).

### III. Adjudication

Father argues that the trial court erred in determining that S.E.W. was abused and neglected and challenges several findings of fact.

#### A. Findings of Fact

Father challenges Finding 11(a), quoted below:

[Father] failed to complete a substance abuse assessment and comply with all treatment recommendations, as ordered by this court[.]

Relevant portions of the hearing are as follows:

THE COURT: I see from the order on adjudication that [Father] was ordered to have substance abuse assessment and follow recommended treatment. Do you know if he ever did that?

[Mother]: I do not, ma'am.

. . . .

THE COURT: In the last -- the order that gave you custody, he was to follow the treatment recommendations of the substance abuse assessment, do you know if he did that?

[Mother]: I do not.

Testimony that witnesses do not know whether Father complied does not support a finding that Father has not

complied. Finding 11(a) is not supported by clear, cogent, and convincing evidence.

Father also challenges Finding 11(b), quoted below:

[Father] failed to complete a parenting class for infants and toddlers through Wake County Human Services or other approved parenting course and demonstrate skills learned in visitation with the child. [Father] did complete Fathers Forever while incarcerated. However, the Fathers Forever course does not meet the requirements of the court's prior order.

As to the final sentence of this finding, Father contends "there was no evidence this class [Fathers Forever] was not, in fact, approved or otherwise did not meet the criteria set out by the court's prior order." No evidence in the record supports this portion of the finding.

Father further challenges Finding 11(e), quoted below:

[Father] was convicted, after a jury trial on August 04, 2011, of Felony Child Abuse Inflicting Serious Bodily Injury upon the minor child who is the subject of this petition in Wake County Superior Court, file # 10 CRS 217524.

The record contains a judgment and commitment, case number 10 CRS 217524, showing Father was convicted of felony child abuse inflicting serious physical injury, in violation of N.C.G.S. § 14-318.4(a). Insofar as the trial court found that Father was convicted of felony child abuse inflicting serious

bodily injury, as opposed to serious physical injury, this finding is also in error.

Father further contends that Finding 12(f), quoted below, was unsupported by the evidence.

[Father] has not accepted responsibility for his actions in abusing and neglecting the child[.]

The trial court's comments at the hearing indicate that this finding stemmed, at least in part, from Father's decision to appeal his criminal conviction for felony child abuse inflicting serious physical injury. The decision to appeal a criminal conviction does not necessarily show unwillingness to accept responsibility. Our review of the record reveals no other evidence which supports this finding. This finding is therefore not supported by evidence in the record.

Father further challenges the finding relating to contact with S.E.W., quoted below:

Since the adjudication hearing in the underlying matter, file # 10-JA-149, [Father] has had the ability to remain in contact with the child, by sending cards, gifts, or other items through the social worker assigned to the case at that time, Mr. Dale McKee. However, [Father] has not sent any such items, or attempted any contact with the child.

Father's argument focuses on the fact that Father was ordered by the trial court not to contact S.E.W. However, Father does not contend this finding is unsupported by clear, cogent, and convincing evidence. Father's argument is thus without merit.

### B. Conclusions of Law

Father argues that "there is no indication that the lack of contact resulted in either an injurious environment or the child receiving a lack of proper care or supervision while in [Mother's] custody or further abuse[.]" However, lack of contact is not the only finding relevant to the conclusion of abuse and neglect.

#### i. Rule

An abused juvenile is any "juvenile less than 18 years of age whose parent":

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means[.]

N.C. Gen. Stat. § 7B-101(1) (2011).

A neglected juvenile is a juvenile who "does not receive proper care, supervision, or discipline from the juvenile's

parent . . . or who lives in an environment injurious to the juvenile's welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2011).

Where “a child has not been in the custody of a parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect.” *In re J.G.B.*, 177 N.C. App. 375, 381-82, 628 S.E.2d 450, 455 (2006). “This is because requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” *Id.* at 382, 628 S.E.2d at 455. “Where evidence of prior neglect is considered, a trial court must also consider evidence of changed circumstances and the probability of a repetition of neglect.” *Id.*

ii. Relevant Findings of Fact

Unchallenged findings are “deemed to be supported by sufficient evidence and are binding on appeal.” *In re M.D., N.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). “Where there are sufficient findings of fact based on competent evidence to support the trial court’s conclusions of law, the judgment will not be disturbed because of other erroneous findings which do not affect the conclusions.” *In re H.D.F.*,



H.C., A.F., 197 N.C. App. 480, 490, 677 S.E.2d 877, 883-84 (2009).

The trial court made the following relevant findings:

8. [S.E.W.] was adjudicated abused by this court in file # 10-JA-149. At the adjudication hearing of the underlying matter, file #10-JA-149, this court found as fact:

a. That the child was taken to the hospital after the mother noticed the child could not straighten her leg and appeared to be in pain.

b. A skeletal survey revealed the child had an acute fracture of the left tibia caused by blunt force trauma.

c. In addition to the most recent injury, the survey showed the child suffered from several more injuries, which were in the healing stages. Those prior injuries included a right tibia fracture, a left femur fracture, multiple fractures in both knees, and two right rib fractures.

d. This court specifically found as fact that these serious injuries were caused by other than accidental means;

e. At the time of the adjudication hearing, neither parent could offer any explanation for the cause of the injuries[.]

. . . .

10. This child was adjudicated neglected by this court in file # 10-JA-149. In the underlying matter, file #10-JA-149, this court adjudicated the child neglected in that the child did not receive proper care

and supervision, and the child was exposed to an injurious environment[.]

11. There is a reasonable possibility of future abuse and neglect by [Father], in that [Father] failed to correct the conditions [that] led [to] the removal of the child from his custody in file #10-JA-149. Specifically:

. . . . .

b. . . . . [Father] did complete Fathers Forever while incarcerated. . . . .

c. [Father] failed to complete a psychological evaluation and follow all treatment recommendations. [Father's] testimony that he completed a psychological evaluation with his social worker is not credible;

d. [Father] failed to enroll in and complete a domestic violence program approved by the North Carolina Domestic Violence Commission and demonstrate the skills learned in his social interactions[.]

The record further indicates that Father was convicted by a jury of felony child abuse inflicting serious physical injury, in violation of N.C.G.S. § 14-318.4(a). *State v. Webb*, \_\_\_ N.C. App. \_\_\_, 725 S.E.2d 923 (5 June 2012) (unpublished) (COA12-88), *disc. review denied*, \_\_\_ N.C. \_\_\_, 731 S.E.2d 169 (2012). The findings of fact and the record show that S.E.W. is an abused juvenile under N.C.G.S. § 7B-101(1).

The findings and the record also show that S.E.W. is a neglected juvenile under N.C.G.S. § 7B-101(15). The trial court considered the probability of a repetition of neglect because the child had not been in the custody of Father for a significant period of time prior to the termination hearing. The findings, such as Father's failure to complete a psychological evaluation and a domestic violence program, indicate there is a probability of the repetition of neglect. The trial court did not err in reaching these conclusions.

Father also challenges other grounds supporting the adjudication. Because the adjudication, on the basis of the conclusion as to abuse and neglect is affirmed, we need not address these arguments. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd*, 360 N.C. 360, 625 S.E.2d 779 (per curiam) (2006).

#### IV. Disposition

The following procedure is used to assess the child's best interest:

In each case, the 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 weight assigned to any particular factor is left to the trial court's discretion. *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709-10 (2005), *aff'd*, 360 N.C. 475, 628 S.E.2d 760 (2006) (per curiam).

The following findings are relevant:

1. As of the date of the hearing on the matter, [S.E.W.] is approximately two and a half years old;
2. There is no pending adoption of the child or step-parent seeking to adopt the child;
3. The permanent plan for the child in file # 10-JA-149 was achieved by returning [her] to the legal and physical custody of [Mother];
4. [Father] has not seen the child since the child was approximately six weeks old.

. . . .

6. Despite [Father]'s testimony that he loves the child, the child has no bond or relationship with [Father];

7. [Mother] and her extended family are all closely bonded with the child in an appropriate and loving manner;

8. [Mother] and her extended family have adequate financial means to provide for all of the minor child's needs, even without support from [Father] in the future;

. . . .

16. [Father] admitted he depleted the joint bank account he shared with [Mother] prior to his arrest, leaving [her] and the child with no means of financial support.

. . . .

18. [Mother] desires to make a plan of care for the child in the event she is unable to care for the child. However, she cannot make adequate permanent arrangements to assure the child's continued safety from harm while [Father's] parental rights are intact.

Father contends the trial court faulted him for circumstances beyond his control, such as his inability to bond with S.E.W. due to the no-contact order and his incarceration. The trial court's focus, on a petition for termination of parental rights, is the child's best interests, not the interests or desires of the respondent parent. See N.C.G.S. § 7B-1110(a) ("After an adjudication that one or more grounds

for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest."). Viewed from this perspective, we cannot say that the decision to terminate Father's parental rights was manifestly unreasonable. The order is affirmed.

Affirmed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).