IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-561

Filed: 17 November 2015

Orange County, Nos. 12 JT 94-95

IN THE MATTER OF: S.K., G.K.

Appeal by respondent from orders entered 16 January 2014 and 13 February 2015 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 28 October 2015.

Holcomb & Cabe, L.L.P., by Samantha H. Cabe, for petitioner-appellee.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Tobias R. Coleman, for guardian ad litem.

Richard Croutharmel, for respondent-appellant.

CALABRIA, Judge.

Respondent, appellant-father ("father"), appeals from orders ceasing reunification efforts and terminating his parental rights to S.K. (hereinafter referenced by pseudonym of "Seth") and G.K. (hereinafter referenced by pseudonym of "Glen"). Although mother also appealed the termination order, her appeal is separate. Therefore, mother is not a party to this appeal. We affirm the trial court's orders.

Background

On 18 October 2012, the Orange County Department of Social Services ("DSS") filed juvenile petitions alleging that Seth and Glen were neglected and dependent juveniles. By a consent order filed 13 November 2012, the trial court adjudicated the juveniles as dependent. After a hearing on 21 February 2013, the trial court relieved DSS and the guardian *ad litem* of further responsibility and closed the case.

Approximately six months later, DSS received reports that father assaulted the boys' mother and maternal great-grandmother and filed new petitions alleging the juveniles were neglected and abused. Father became highly intoxicated and argued with the boys' mother about the manner in which the boys should be raised. After an altercation, father struck and kicked the boys' mother in the face. Father then assaulted the maternal great-grandmother by knocking her over in a chair and hitting her in the face and nose. One of the boys unsuccessfully attempted to protect his mother and great-grandmother. Father was arrested and was charged with resisting a public officer, injury to personal property, assaulting a child under 12, assault with a deadly weapon with minor children present causing serious bodily injury, assault causing serious bodily injury, abuse to a disabled or elderly person, and assault on a female. Following a hearing on 2 May 2013, the trial court

adjudicated the boys as neglected and dependent juveniles and continued custody with DSS.

On 19 December 2013, the trial court held a review hearing and filed an order on 16 January 2014 ceasing reunification efforts with father. Father filed a notice to preserve the right to appeal that order on 27 February 2014.[1] On 16 October 2014, when DSS filed motions in the cause for termination of father's parental rights to each child, father was incarcerated. The trial court heard the motions on 15 January 2015, and on 13 February 2015, in which father was represented by counsel. The trial court terminated father's parental rights to both boys on grounds, *inter alia*, of neglect and dependency. Father filed notice of appeal on 11 March 2015 from the orders ceasing reunification efforts and terminating his parental rights.

Order Ceasing Reunification Efforts

Father contends the trial court abused its discretion by basing its decision to cease reunification efforts solely upon findings that (1) father is currently incarcerated with a proposed release date of August 2017[2] and (2) reunification with

[1] The record is silent as to when the order was served so we are unable to determine whether the notice to preserve the right to appeal was timely "made within 30 days after entry and service of the order" as provided by N.C. Gen. Stat. § 7B-1001(b) (2013). Assuming, *arguendo*, the notice was not timely filed, we conclude our review of the order is permitted by N.C. Gen. Stat. § 7B-1001 because the order was raised as an issue in a timely appeal from the termination of parental rights order. *See In re A.E.C.*, ___ N.C. App. ___, ___, 768 S.E.2d 166, 170, *disc. review denied,* ___ N.C. ___, 772 S.E.2d 711 (2015).

[2] We note the discrepancy between the release date of August 2017 found in the cease reunification order and the release date of March 2017 found in the termination of parental rights

father would be futile and inconsistent with each child's need for a safe, permanent home within a reasonable period of time given his release date would be nearly five years from the date of the hearing. Father argues that although it is a relevant consideration, a parent's incarceration cannot be the sole reason for ceasing reunification efforts based on futility of effort. He also argues the court erred by failing to make findings concerning proposed alternative child care providers during the period of incarceration. Finally, he submits that it "made no sense" to cease reunification efforts with him but not with the child's mother in the absence of any findings of fact concerning the relationship between the two parents. We disagree.

"A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). A permanency planning order ceasing reunification efforts need not quote the language of N.C. Gen. Stat. § 7B-507(b)(1) but must show that the court "considered the evidence in light of whether reunification '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.' " *In re L.M.T.*, 367 N.C. 165, 167–68, 752 S.E.2d 453, 455 (2013) (citing N.C. Gen. Stat. § 7B-507(b)(1) (2011)). Moreover, when a cease reunification order is appealed together with a

orders. The evidence before the trial court at the permanency planning hearing on 19 December 2013 showed father's projected release date as 21 August 2017. The evidence at the termination of parental rights hearing showed the projected release date as March 2017. However, for the reasons set out below, this discrepancy does not affect our analysis.

termination of parental rights order "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order." *Id.* at 169, 752 S.E.2d at 457. A parent's "extended incarceration is clearly sufficient to constitute a condition that [renders a parent] unable or unavailable to parent [a child]." *In re L.R.S.,* ___ N.C. App. ___, ___, 764 S.E.2d 908, 911 (2014).

In any order placing custody of the child with a county department of social services, the trial 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) (2013). "The trial court may 'only order the cessation of reunification efforts when it finds facts based upon credible evidence presented at the hearing that support its conclusion of law to cease reunification efforts.' " *In re N.G.*, 186 N.C. App. 1, 10, 650 S.E.2d 45, 51 (2007) (quoting *In re Weiler,* 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003)). "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) (citations omitted).

In the instant case, the trial court found that custody with a relative was not an option because there were no relatives able and willing to provide a permanent home for Seth and Glen. Contrary to father's argument, DSS sought alternative child care providers during father's period of incarceration. The trial court concluded that due to father's extended incarceration for years and the basis for his incarceration, father would be unable to provide the children with a safe, permanent home within a reasonable period of time. The trial court's findings were based on credible evidence and support the trial court's conclusion. We conclude the court did not abuse its discretion in ceasing reunification efforts.

Termination of Parental Rights Orders

Father argues that certain findings of fact relative to the grounds of neglect and failure to legitimate are not supported by the evidence or are insufficient to support the conclusions of law finding those grounds to exist. According to father, the trial court erred by failing to make findings as to why all of the proposed alternative child-care arrangements were inadequate. He submits that the trial court failed to address the availability or suitability of one other paternal sister to serve as a placement for the children. We disagree.

"A valid finding on one statutorily enumerated ground is sufficient to support an order terminating parental rights." *In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986) (citation omitted). Consequently, when a trial court finds multiple grounds upon which to base termination of parental rights and the appellate court determines one ground is conclusively established, it is unnecessary for the appellate court to address other grounds adjudicated by the trial court. *In re P.L.P.,* 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005).

A proceeding to terminate parental rights consists of two stages and different standards of analysis apply to each stage. *In re D.R.B.*, 182 N.C. App. 733, 735, 643 S.E.2d 77, 79 (2007). In the first phase, the trial court "examines the evidence and determines whether sufficient grounds exist under N.C. Gen. Stat. § 7B-1111 to warrant termination of parental rights." *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736 (2004). If the court determines that one or more grounds for terminating a parent's rights exists, it then proceeds to the disposition phase and makes a discretionary determination whether terminating the parent's rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2013). Appellate review is limited to a determination of whether the findings of fact are supported by clear, cogent and convincing evidence and whether the findings of fact support the adjudicatory conclusions of law. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d

1, 6 (2004). The conclusions of law are reviewable *de novo*. *In re S.N.,* 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008).

Termination of parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) is permitted if the parent is incapable of providing for the proper care and supervision of the juvenile and there is a reasonable probability that the incapability will continue for the foreseeable future. N.C. Gen. Stat. § 7B-1111(a)(6) (2013). The incapability may be the result of "any cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child[-]care arrangement." *Id.* To support termination of parental rights on this ground, the trial court's findings must address (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child-care arrangements. *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

In the instant case, the trial court found that father was incapable of providing for the proper care and supervision of each child, and that it was reasonably probable the incapability would continue for the foreseeable future. Specifically, the trial court found that father was currently incarcerated with a release date of March 2017. We have held that a parent's extended incarceration is a cause or condition which renders the parent unable or unavailable to provide proper care or supervision of a child. *In re L.R.S.*, ___ N.C. App. at ___, 764 S.E.2d at 911. Father does not dispute that he will not be released until March 2017 but argues "it cannot be said father's

incapacitation would continue for the foreseeable future." Although father's incapacitation may not continue for the foreseeable future, in *L.R.S.*, we concluded that a parent's incarceration for less than two years and possibly more, after the date of the hearing constituted a condition or cause rendering the parent incapable of parenting the child for the foreseeable future. Similarly, in the instant case, father's release date was more than two years in the future.

The trial court made the following findings concerning the availability of alternative child-care arrangements in each order[3]:

> 17. Respondent father testified that he believed the paternal grandfather of the children could take care of them, pending Respondent Father's release from prison. However, a home-study was completed on the paternal grandfather's home and the home-study was not approved by Guilford County DSS. The home was not adequate for children and the wife of the paternal grandfather did not believe she could take care of the children.
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> 18. When the children were first removed from the home, they were placed with a maternal[4] aunt, who could only keep them short-term. The children left her home and were placed in foster care.
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> 19. Another paternal sister was considered as a placement potential for the children, however, due to her own familial commitments and pregnancy, Respondent father did not

[3] The quoted findings of fact are identical in each order except the order terminating parental rights to Seth contains clerical errors that are corrected in the order with regard to Glen. The quoted findings are in the order terminating parental rights to Glen.

[4] This appears to be a clerical or typographical error as the uncontroverted evidence shows the boys were first placed with a paternal aunt, and the subsequent findings contextually confirm that the boys were placed with a paternal, not maternal, aunt.

> think she would be able to care for the children.
>
> 20. Other than the paternal grandfather and two paternal aunts, one of whom could or would assume a caretaker role for the children, there were no alternative caretakers available for the children.

It has been "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.*, 210 N.C. App. 355, 364, 708 S.E.2d 191, 197 (2011). Father does not contest the trial court's findings that placement in the homes of his father and two sisters was determined not to be viable. Findings of fact that are not challenged are deemed supported by evidence and are conclusive on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Although a third sister was mentioned as a possible placement alternative, father presented no further evidence at the termination hearing about this sister, her identity and life situation, her willingness to care for the children, or the viability of placement with this sister. *See In re D.J.D.,* 171 N.C. App. 230, 239, 615 S.E.2d 26, 32 (2005) (upholding termination on ground of dependency where the father failed to present evidence that his proposed alternative caretaker, an aunt, was willing or able to care for the children). We overrule father's argument.

Conclusion

Father's rights were terminated on the ground that he was incapable of providing for the proper care and supervision of the boys and there was a reasonable

probability that the incapability would continue in the foreseeable future. Upon finding grounds for termination, the trial court properly concluded that it was in the boys' best interests for the father's rights to be terminated. We affirm the orders ceasing reunification efforts and terminating father's parental rights.

AFFIRMED.

Judges STROUD and DAVIS concur.

Report per Rule 30(e).