IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-789

Filed: 19 January 2016

Guilford County, Nos. 09 JT 261; 10 JT 13

IN THE MATTER OF: D.N.M.G. and T.D.G.

Appeal by Respondent-father from order entered 1 April 2015 by Judge Betty Brown in Guilford County District Court. Heard in the Court of Appeals 29 December 2015.

Mercedes O. Chut for Petitioner Guilford County Department of Health and Human Services.

Blake H. Larsen and Lauren R. Hinzey for Guardian ad Litem.

Robert W. Ewing for Respondent-father.

STEPHENS, Judge.

Respondent-father ("Respondent") appeals from the district court's order terminating his parental rights to the juveniles D.N.M.G. ("David," born February 2009)[1] and T.D.G. ("Tommy," born January 2010). The mother of David and Tommy relinquished her parental rights in 2012 and is not a party to the instant appeal, in which Respondent contends the district court erroneously concluded that grounds

[1] For the purpose of protecting their privacy, in accordance with Rule 3.1 of our Rules of Appellate Procedure, we refer to the juveniles by pseudonyms throughout this opinion.

existed to terminate his parental rights. Specifically, Respondent argues that the district court erred by improperly taking judicial notice of findings of facts contained in previous review orders and relying on those findings—which were made under a lower standard of proof than the "clear, cogent, and convincing" evidence required for an adjudication pursuant to N.C. Gen. Stat. §§ 7B-1109(f) and 7B-1111(b)—to support its termination order. After due deliberation, we affirm the district court's order.

Factual Background and Procedural History

In April 2009, Guilford County Department of Health and Human Services ("DHHS")[2] obtained nonsecure custody of David and filed a juvenile petition alleging that he and his two maternal half-siblings ("Teresa" and "Calvin") were abused, neglected, and dependent. The petition was filed after five-year-old Teresa was admitted to a hospital emergency room with a perforated stomach, a life-threatening injury, inflicted by a punch to the abdomen from Respondent while her mother was out of the home. Although Respondent and Teresa's mother both insisted that Respondent was administering CPR to Teresa after she swallowed a toy, Teresa told an interviewer that she had neither swallowed a toy nor had a toy in her mouth, and that Respondent had hit her prior to punching her in the stomach. DHHS further alleged that Respondent had been arrested for felonious child abuse based on the

[2] At the time the juvenile petitions were filed in April 2009 and January 2010, the agency's name was Guilford County Department of Social Services. In 2014, the agency merged with the Guilford Department of Health to become the Guilford County Department of Health and Human Services.

incident; that the juveniles' mother violated a safety plan by continuing to allow Respondent to have contact with her children; that Respondent was harassing and threatening to kill the children's maternal grandmother and aunt; that Respondent had met with the social worker while intoxicated and refused to sign a safety plan; and that Respondent had spoken to the social worker by phone while intoxicated on 7 April 2009 and informed her that "he did not have to go no where [sic] and he was not leaving the home and he did not care what [she] said about it."

By consent order entered 24 June 2009, the district court adjudicated David a neglected juvenile. The court made findings consistent with the allegations in the petition filed by DHHS and further found that Respondent was awaiting trial for felony child abuse, had not contacted DHHS, lacked stable housing and income, and had not addressed his issues with domestic violence. The court ordered Respondent to enter into a case plan with DHHS if he wished to pursue reunification. At the time of the court's initial review order on 1 October 2009, Respondent had made no efforts toward reunification. The court ordered him to participate in the Domestic Violence Intervention Program ("DVIP"), obtain and follow the recommendations of a parenting assessment, obtain employment and submit to a voluntary child support agreement, and enter into a case plan with DHHS.

Tommy entered DHHS custody as a newborn in January 2010, and was adjudicated neglected and dependent by consent order on 22 March 2010. Noting that

Respondent had entered into a case plan with regard to David, the district court ordered him to comply with the conditions of the plan and to provide DHHS with his current address to allow the social worker to visit his residence.

Following a permanency planning hearing on 4 March 2010, the district court found that Respondent had completed a parenting and psychological evaluation, the report from which was pending. However, Respondent had cancelled his appointment for a domestic violence assessment, remained unemployed, lacked stable housing, and failed to provide the court with documentation of his avowed status with the Army National Guard. The court found that Respondent had been declared AWOL as of January 2009 and was discharged officially on 31 August 2009. At the time of the next hearing on 22 July 2010, the court had received the report from Respondent's psychological evaluation, which recommended an alcohol and substance abuse assessment. Respondent had not responded to a 7 June 2010 letter asking him to contact his social worker to arrange the assessment; nor had he followed through with the parenting program. The social worker had been required to end a recent phone call with Respondent when he began yelling at her. The DVIP Program reported a "number of missed appointments" by Respondent, marking his third unsuccessful referral to DVIP by DHHS. The court found that Respondent had not visited David or Tommy since 6 May 2010 and continued to lack stable housing and employment.

The district court discontinued Respondent's visitation with David and Tommy on 6 January 2011. The court found that, in addition to making no progress on his case plan and failing to visit his children, Respondent was placing harassing phone calls to the children's mother, the children's maternal grandmother, and other family members.

The district court ceased reunification efforts with Respondent on 1 April 2011, finding that "he is not cooperative, he is violent, and he has not complied with the components of his service agreement." The court noted that Respondent had not appeared in court since 27 May 2010, had not replied to letters from the social worker, had made no progress on his case plan, and had continued to make phone calls to the children's mother's employer. In a subsequent order entered 1 July 2011, the court found that Respondent had made several angry phone calls to DHHS demanding to know the whereabouts of David and Tommy and information about their mother. Characterizing him as a "dangerous and hostile person" who "has attempted to intimidate the [s]ocial [w]orker and the [c]ourt" throughout the proceedings, the court ordered Respondent to have no contact with the children or their mother and to give all parties ten days' notice prior to coming to inspect the court file.

The district court changed David and Tommy's permanent plan to adoption on 27 June 2012, after their mother relinquished her parental rights on 23 March 2012.

DHHS filed a petition on 13 August 2012 alleging six grounds for termination of Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)-(3) and (5)-(7).

The district court held an initial termination hearing in this cause on 3 June 2013, but did not enter its order terminating Respondent's parental rights until 19 November 2013. Respondent filed a motion for relief from the order pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b)(6), due to the court's failure to enter its adjudication within 30 days of the hearing as required by N.C. Gen. Stat. § 7B-1109(e). Citing our decision in *In re C.J.B.*, 171 N.C. App. 132, 135, 614 S.E.2d 368, 370 (2005), the district court granted Respondent's motion and set aside the termination order on 7 February 2014. The court granted DHHS's motion to amend its termination petition and scheduled a new hearing for 25 November 2014.

Respondent did not attend the second termination hearing but was represented by counsel. Based on the evidence adduced by DHHS, the district court adjudicated the existence of the following five grounds for termination of Respondent's parental rights: (1) neglect; (2) willful failure to make reasonable progress to correct the conditions that led to the children's removal from the home; (3) willful failure to pay a reasonable portion of the children's cost of care; (4) dependency; and (5) willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6)-(7) (2013). The court further concluded that the termination of Respondent's parental

rights was in the best interests of the children. Respondent gave timely notice of appeal from the termination order.

Analysis

Respondent argues that the district court erred in adjudicating the existence of grounds for termination of his parental rights under N.C. Gen. Stat. § 7B-1111(a). Although he does not specifically contest any of the trial court's individual findings of fact, Respondent claims the court improperly took judicial notice of findings of fact contained in its previous review orders, which were found under a lower standard of proof than the "clear, cogent, and convincing evidence" standard that applies to adjudications under N.C. Gen. Stat. §§ 7B-1109(f) and 7B-1111(b) (2013).[3] Respondent suggests that the court then erroneously "applied" the findings from its prior review orders "to prove that grounds existed to terminate [his] parental rights." In support of this argument, Respondent relies on this Court's prior decision in *In re A.K.*, 178 N.C. App. 727, 637 S.E.2d 227 (2006), in which we reversed an adjudication of neglect where the district court did not accept any formal evidence to support its order and instead relied entirely on taking judicial notice of prior review orders in the juvenile's case file.

We review an adjudication under N.C. Gen. Stat. § 7B-1111(a)(1) to determine (1) "whether the [district court's] findings of fact are supported by clear, cogent, and

[3] Respondent also notes the relaxed standard for admitting evidence at review hearings under N.C. Gen. Stat. § 7B-906.1(c) (2013).

convincing evidence," and (2) "whether these findings, in turn, support [its] conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (citation omitted), *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004). Uncontested findings are deemed to be supported by the evidence for purposes of our review. *See, e.g.*, *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007). Moreover, "erroneous findings unnecessary to the determination do not constitute reversible error" where an adjudication is supported by sufficient additional findings grounded in competent evidence. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (citation omitted). The adjudication of any single ground under N.C. Gen. Stat. § 7B-1111(a) will support an order terminating parental rights. *See, e.g.*, *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *affirmed per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

As Respondent observes, "the doctrine of collateral estoppel permits the trial court [at an adjudicatory hearing] to rely on only those findings of fact from prior orders that were established by clear and convincing evidence." *In re N.G.*, 186 N.C. App. 1, 9, 650 S.E.2d 45, 51 (2007) (citation and internal quotation marks omitted), *affirmed per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008). Notwithstanding this limitation, "this Court repeatedly has held that a trial court may take judicial notice of earlier proceedings in the same case." *In re W.L.M.*, 181 N.C. App. 518, 523, 640 S.E.2d 439, 442 (2007) (citations omitted). Moreover, when taking judicial notice of

previous orders in a termination of parental rights case, there is a "well-established supposition that the trial court in a bench trial is presumed to have disregarded any incompetent evidence." *In re J.B.*, 172 N.C. App. 1, 16, 616 S.E.2d 264, 273 (2005) (citation and internal quotation marks omitted).

In the present case, the transcript of the 25 November 2014 termination hearing shows that DHHS introduced several of the district court's prior orders, as well as documentary exhibits such as Respondent's psychological and parenting evaluation. However, DHHS also presented live testimony from Rhonda Teal, the social worker supervisor assigned to Respondent's case since February 2014. Teal attested to Respondent's lack of progress on his case plan as of the date of the hearing, and confirmed that the information found in the prior orders and other exhibits was consistent with the information in David's and Tommy's foster care records on file with DHHS. Teal averred, for example, that Respondent had paid nothing toward the children's cost of care in the six months immediately preceding DHHS's filing of the petition for termination of his parental rights. During this period, Respondent did not contact DHHS to inquire about the children, nor did he "send any cards, letters, or other tokens of affection to the social worker for the benefit of the children[.]" Teal testified further regarding the extended periods during which Respondent had no contact with DHHS, as well as the "long stretch of months" just before the district

court suspended his visitation with David and Tommy when Respondent "stopped coming."

Having been assigned to the case for the nine months preceding the termination hearing, Teal was able to describe Respondent's overall lack of progress as of 25 November 2014. Notwithstanding Respondent's failure to attend either of the review hearings held after the district court set aside its original termination order, Teal made clear that DHHS "has continually reached out and tried to determine if [Respondent] in fact was working [on] his case plan." Teal contrasted the department's performance with Respondent's

> lack of follow-through with everything—with any efforts that [DSS] or [DHHS] has tried to help him with or services we attempted to put in place, the numerous times we've tried to reach out to contact him, just saying, you know, "Maintain contact with us. Sign the releases so we can get the information and get the help put in place." . . .
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> . . . And the five years—five years, seven months for [David], who's been in custody, [Respondent] has completed parenting classes and he's completed a parenting assessment, psychological, but one of the main issues that brought the children into care was the domestic violence, the violence and that still has yet to be addressed.

Teal advised the court that Respondent would not be deemed capable of caring for his children properly without completion of a domestic violence treatment program and assurances from his treatment providers "about exactly what progress he did make and where he is."

DHHS presented additional testimony from Phyllis Shanklin, head coordinator for the New Options for Violent Actions program, who performed Respondent's domestic violence assessment on 9 September 2014. According to Shanklin, Respondent "denied allegations of physical abuse" and although he had "admitted to verbal abuse," Respondent had attended just three of the twenty-six weekly group sessions required by the program and continued to deny any physical abuse ever occurred. The group facilitator reported to Shanklin that Respondent "engaged in severe blaming [of] the victim, painted himself as the victim, and was totally focused on blaming the victim for her behavior." Respondent also "blam[ed] a corrupt cop for [his] being in the program." When asked whether it was "fair to say [Respondent] has a lot of work to do" to address his issues with domestic violence, Shanklin responded, "Absolutely."

Under N.C. Gen. Stat. § 7B-1111(a)(1), "[t]he [district] court may terminate the parental rights to a child upon a finding that the parent has neglected the child." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003) (citation omitted). A "neglected" juvenile is defined, *inter alia*, as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . ; or who has been abandoned; . . . or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15) (2013). Where a child has long been removed from the parent's custody at the time of the termination

hearing, "parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his] parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted).

In the present case, David and Tommy were adjudicated neglected in June 2009 and March 2010. These adjudications, and the findings made in support thereof, were properly relied upon by the district court. *See In re N.G.*, 186 N.C. App. at 9, 650 S.E.2d at 51. The court made additional findings—supported by testimony from Teal and Shanklin—regarding Respondent's prolonged non-cooperation with DHHS and non-compliance with his case plan. Thus, Respondent's reliance on *In re A.K.* is misplaced, given that here, DHHS presented unrebutted evidence from live witnesses that, more than five and one-half years after David's removal from the home, Respondent had yet to act upon the recommendations of his psychological evaluation or address his issues with domestic violence, whereas in *In re A.K.*, "the [district] court took judicial notice of the prior court orders . . . [but] received no additional evidence." 178 N.C. App. at 729, 637 S.E.2d at 228. Moreover, the court's findings fully support its conclusion that David and Tommy were likely to experience a repetition of neglect if returned to Respondent's care. We therefore hold that the district court did not err in taking judicial notice of its prior orders or in concluding

that grounds existed to terminate Respondent's parental rights. Accordingly, the district court's order is

AFFIRMED.

Chief Judge McGEE and Judge TYSON concur.

Report per Rule 30(e).