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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-259

Filed: 4 October 2016

Forsyth County, No. 13 JT 178

IN THE MATTER OF: J.F.

Appeal by respondent father from order entered 10 December 2015 by Judge Laurie Hutchins in Forsyth County District Court. Heard in the Court of Appeals 19 September 2016.

Forsyth County Attorney, by Assistant County Attorney Theresa A. Boucher, for petitioner-appellee.

Sydney Batch for respondent-appellant.

Parker Poe Adams & Bernstein LLP, by Elizabeth Rivers Trenary, for guardian ad litem.

ENOCHS, Judge.

Respondent appeals from an order terminating his parental rights to his minor child John.¹ After careful review, we affirm.

Factual Background

On 25 July 2013, the Forsyth County Department of Social Services (“DSS”) filed a petition alleging that John was a neglected and dependent juvenile. At the

¹ A pseudonym is used throughout this opinion to protect the identity of the minor child and for ease of reading. See N.C.R. App. P. 3.1(b).

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time the petition was filed, Respondent was incarcerated pending charges for breaking and entering and various drug-related offenses. John's mother — who is not a party to the present appeal — had recently been released from prison, but had refused to provide her address to DSS.

While his parents were incarcerated, John had been placed with relatives. However, these relatives ultimately decided that they no longer wished to continue to care for him. As a result, on 25 July 2013 DSS obtained nonsecure custody of John and placed him with a foster family.

A hearing on DSS's petition was held before the Honorable Lawrence J. Fine in Forsyth County District Court on 4 September 2013. On 27 September 2013, the court entered an order finding that John was a dependent juvenile. The court ordered Respondent, upon release,² to submit to substance abuse, mental health, and parenting assessments and comply with any resulting recommendations; to meet with a social worker to establish a case and visitation plan; and to cooperate with random drug testing.

On 3 March 2014, Respondent was released from prison and initially endeavored to comply with the court's 27 September 2013 order. A permanency planning review hearing was held on 23 April 2014, and the court entered a corresponding order on 23 June 2014. The court's 23 June 2014 order imposed

² At the time the order was entered, Respondent was still incarcerated.

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additional requirements upon Respondent, including the requirements that Respondent (1) obtain suitable housing and submit a copy of a lease to DSS; (2) notify DSS within 24 hours of any change of address; (3) obtain and maintain employment for six months; and (4) follow any conditions established as part of his probation and parole.

After a subsequent review hearing was held on 28 January 2015, the court entered a permanency planning order on 4 March 2015 finding that Respondent was not complying with its prior orders. Specifically, the court found that Respondent had, *inter alia*, (1) failed to submit to multiple random drug screen testings requested by DSS; (2) submitted a drug test which was positive for cocaine and benzoylecgonine; (3) moved without notifying DSS; and (4) failed to provide DSS with documentation evidencing his employment. Based on these findings, the court entered a permanent plan of adoption for John with a concurrent plan of reunification.

On 6 May 2015, DSS filed a petition to terminate Respondent's parental rights to John on the grounds of neglect and failure to make reasonable progress. A hearing on the petition was held on 3 August and 4 September 2015 before the Honorable Laurie Hutchins in Forsyth County District Court. On 10 December 2015, the court entered an order terminating Respondent's parental rights on both grounds alleged in the petition. The court further concluded that termination of Respondent's

parental rights was in John's best interests.³ Respondent entered a timely notice of appeal.

Analysis

On appeal, Respondent argues that the court erred by concluding that grounds existed to terminate his parental rights. We disagree.

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (internal citation and quotation marks omitted). “If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court.” *In re A.R.H.B. & C.C.H.L.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (quoting *In re J.M.W., E.S.J.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006)).

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2015), a court may terminate parental rights when “[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile.”

³ The court's order also terminated the parental rights of John's mother.

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Respondent concedes that John had been in foster care for more than 12 months when the termination petition was filed, but contends that he made reasonable progress in correcting the conditions that led to John's removal such that John was not *willfully* left in foster care.

Specifically, Respondent challenges the court's finding that he "has failed to establish a safe home for him and his child to live and demonstrate the ability to meet the child's basic needs." He contends that this finding was erroneous because the evidence presented at the termination hearing established that he "had the means to care for his son." Contrary to Respondent's assertion, however, this finding was supported by a DSS social worker's testimony at the termination hearing. The social worker specifically testified that Respondent had lived in at least seven different residences in the 18 months since his release from prison and, at the time of the hearing, had only been living in his current residence for approximately one month. She further testified that although Respondent claimed to be employed, he had failed to provide any documentation of employment since April 2014, despite multiple requests from DSS. Therefore, the trial court's finding that Respondent "has failed to establish a safe home for him and his child to live and demonstrate the ability to meet the child's basic needs" was clearly supported by competent evidence.

Furthermore, the trial court also found that Respondent regularly failed to submit to random drug tests required by DSS, failed to cooperate with DSS, failed to

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comply with the terms of his probation and pay his probation fees, was recently charged with a new criminal offense, and had a pending probation violation filed against him. Respondent does not challenge these findings and they are therefore binding on appeal.

These findings of fact, in turn, support the court's conclusion of law that Respondent willfully left John in foster care for more than 12 months without making reasonable progress in correcting the conditions which led to John's removal. It is well settled that

[a] finding of willfulness . . . does not require proof of parental fault. On the contrary, willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort. A finding of willfulness is not precluded even if the respondent has made *some* efforts to regain custody of his child.

In re A.W., 237 N.C. App. 209, 215-16, 765 S.E.2d 111, 115 (2014) (internal citations, quotation marks, and brackets omitted).

While, as noted above, Respondent arguably initially made some minimal efforts to obtain housing and employment, the court's findings reflect that he was unable to demonstrate that he had done so in the roughly two years since he was released from prison. Moreover, the court's findings tended to show that Respondent had made limited progress on his case plan and had failed to cooperate with DSS towards achieving reunification. These findings were sufficient to support the trial court's conclusion that Respondent willfully left John in foster care.

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Accordingly, the trial court properly concluded that Respondent's parental rights were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(2). Since we have concluded termination on this ground was proper, we need not address Respondent's arguments regarding the remaining ground found by the trial court that John was neglected. *See In re A.W.*, 237 N.C. App. at 215, 765 S.E.2d at 114 (“[A] ‘finding of any one of the enumerated grounds for termination of parental rights under N.C.G.S. [§] 7B-1111 is sufficient to support a termination.’” (quoting *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426-27 (2003))).

Respondent also argues that the trial court erred by concluding that termination of his parental rights was in John's best interests. In determining whether a termination of parental rights is in the juvenile's best interests, the court is required to consider the following criteria and make written findings regarding any 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.

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(6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)-(6) (2015).

In the present case, Respondent concedes that the court made sufficient findings regarding all of the relevant factors set forth in N.C. Gen. Stat. § 7B-1110(a). Nevertheless, he contends that the trial court abused its discretion “by minimizing the significant bond the minor child had with his father.” However, the trial court’s order clearly recognized that “[t]here is a loving bond between [John] and [Respondent].” Therefore, the court clearly considered this factor and nonetheless concluded that the other factors — including John’s close relationship with his foster parents, the foster parents’ desire to adopt John, and the need for termination in order to facilitate adoption — outweighed the fact that a bond existed between Respondent and John. As a result, we cannot say that the court abused its discretion in concluding that termination was in John’s best interests. Respondent’s argument on this issue is consequently overruled.

Conclusion

For the reasons stated above, we affirm the trial court’s 10 December 2015 termination of parental rights order.

AFFIRMED.

Judges McCULLOUGH and DILLON concur.

Report per Rule 30(e).