IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-280

Filed: 4 October 2016

Buncombe County, Nos. 08 JT 34, 13 JT 328

IN THE MATTER OF: E.D.D-A., R.R.D-A.

Appeal by respondent-mother from orders entered 27 May 2015 by Judge Susan Dotson-Smith and 23 December 2015 by Judge Ward D. Scott in Buncombe County District Court. Heard in the Court of Appeals 7 September 2016.

*Matthew J. Putnam for petitioner-appellee Buncombe County Department of Social Services.*

*Mercedes O. Chut for respondent-appellant mother.*

*Michael N. Tousey for guardian ad litem.*

BRYANT, Judge.

Where the findings of fact were supported by clear, cogent, and convincing evidence, and those findings support the trial court's conclusions of law to terminate respondent-mother's parental rights, we affirm the trial court's orders ceasing reunification efforts and terminating respondent-mother's parental rights.

The Buncombe County Department of Social Services ("DSS") first became involved with respondent-mother and father[1] in 2002 due to domestic violence

[1] Father is not a party to this appeal.

between respondents and respondent-mother's substance abuse issues. Respondent-mother's only child at that time was T.A. ("Trevor"), who is not involved in this case. Respondents completed services and the case was closed on or about 29 April 2003. E.D.D-A. ("Ella")[2] was born in June 2004. On 1 February 2008, DSS filed a petition alleging Ella was neglected by respondents. DSS obtained non-secure custody of Ella on 26 March 2008. The trial court adjudicated Ella neglected on 9 May 2008, but returned Ella to respondents' custody on 13 May 2009 and terminated reviews at that time.

R.R.D-A. ("Roger")[3] was born in September 2010. On 4 November 2013, DSS filed petitions alleging that Ella and Roger were abused and neglected. The trial court placed the children in DSS's custody on 5 November 2013. On 23 May 2014, the trial court adjudicated Ella and Roger both neglected and seriously neglected. Following a permanency planning hearing, the trial court entered orders on 27 May 2015, changing the permanent plan from reunification to adoption. Respondent-mother filed a Notice to Preserve Right to Appeal on 10 June 2015.

On 13 May 2015, DSS filed petitions to terminate parental rights to Ella and Roger, alleging as grounds to terminate respondent-mother's parental rights that: (1) respondent-mother neglected the juveniles; (2) respondent-mother willfully left the

[2] Pseudonyms are used to protect the identities of the juveniles and for ease of reading.

[3] *See supra* note 2.

juveniles in foster care or placement outside of the home for more than twelve months without showing reasonable progress in correcting the conditions that led to the removal of the juveniles; and (3) the juveniles had been placed in DSS's custody and respondent-mother, for a continuous period of six months next preceding the filing of the petitions, had willfully failed to pay a reasonable portion of the cost of care of the juveniles although physically and financially able to do so. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3) (2015). After a 13 November 2015 hearing, the trial court entered orders on 23 December 2015 terminating respondents' parental rights to the children after adjudicating the existence of the first two grounds alleged in DSS's petitions. Respondent-mother filed notice of appeal on 19 January 2016.

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On appeal, respondent-mother argues the trial court (I) erred in ceasing reunification efforts; (II) erred in finding that grounds existed to terminate her parental rights; and (III) abused its discretion in determining that termination of her parental rights was in the children's best interests as the evidence did not support a finding that the children are likely to be adopted.

*I*

Respondent-mother first contends the trial court erred in ceasing reunification efforts with her. We disagree.

This Court reviews orders ceasing 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). "Where the trial court's findings are supported by competent evidence, they are binding on appeal, even if there is evidence which would support a finding to the contrary." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004) (citing *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003)).

North Carolina General Statutes section 7B-507(b) (2013), which applied at the time of the permanency planning hearing, provided, in relevant part, that a trial court could cease reunification efforts upon making written findings that further 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[.]" *Id.* § 7B-507(b)(1).

Respondent-mother challenges Findings of Fact Nos. 34, 40, 47, 52, and 53 of the trial court's order ceasing reunification efforts.[4] However, respondent-mother makes no argument as to how Findings of Fact Nos. 40 and 52 are unsupported by

[4] These findings are from the order relating to Ella. Respondent-mother challenges the identical findings from the order relating to Roger, which are numbered 28, 34, 41, 46, and 47. While we review the findings from Ella's order for ease of reading, our analysis of Ella's order is equally applicable to Roger's order.

competent evidence, and she has therefore abandoned her challenge to these findings on appeal. *See* N.C. R. App. P. 28(b)(6) (2015) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

Finding of Fact No. 34 recites how DSS came to believe that respondents were living together in violation of a domestic violence protection order ("DVPO") respondent-mother had obtained:

> 34. On January 2, 2015 the Child and Family Team ("CFT") had a meeting with the respondent father, followed by the respondent mother. It appeared to the team that the respondent parents were living together in violation of the Domestic Violence Protection Order ("DVPO") obtained by the respondent mother, as they both self-reported nearly identical stories regarding a conversation with the minor child, and nearly identical stories of moving into a new place. During the meeting SW [(social worker)] Strachota requested the respondent mother's new address, which she was unable to provide. During a later conversation with the social worker supervisor, the respondent mother provided an address in the Arden area and stated she lived at the address. The Department requested on-call go to the residence provided by the respondent mother on January 9, 2015. The on-call social worker reported going out to the residence around 8:00 p.m. with law enforcement, and found the respondent father and the respondent mother together. On-call reported observing both male and female clothing in the residence. The respondent father reported that it was his residence and the respondent mother was visiting; however, he had reported to SW Strachota that he lived in a different residence in Candler earlier in the week. Law enforcement reported that they arrested the respondent father for felony violation of the DVPO, and he was incarcerated. During the on-call incident, the respondent mother reported that she did not live at the residence in Arden, but lived with her mother. Although

> neither parent appeared impaired, on-call social worker observed a vodka drink in the home.

Respondent-mother argues that "[t]he facts [in Finding of Fact No. 34] do not support the conclusion that [respondent-mother] and [respondent-father] were living together." However, the trial court did not find that respondents were living together, but instead stated the facts that led DSS to conclude that respondents were living together. Respondent-mother misconstrues the import of Finding of Fact No. 34 and has not demonstrated that this finding is erroneous.

Finding of Fact No. 47 states that "[r]espondent mother has failed to complete court ordered services or services recommended by the Department, to include but not limited to substance abuse treatment and mental health treatment." Respondent-mother does not argue that this finding is incorrect, but instead argues that it "ignore[s] [her] progress." Respondent-mother asserts in her brief that she attended "63 of 90 hours of outpatient treatment," but she admits she did not complete an inpatient treatment program. Respondent-mother fails to demonstrate that Finding of Fact No. 47 is unsupported by the evidence.

Finding of Fact No. 53 states that "[m]any of the issues that caused the involvement of [DSS], namely substance abuse, untreated mental health issues and domestic violence, still exist at this time." Respondent-mother first argues that the finding that domestic violence is ongoing is unsupported by the evidence, and we agree. Evidence was introduced indicating that respondents had maintained contact

despite the DVPO; however, there was no evidence that domestic violence continued to occur between respondents. We will disregard that portion of Finding of Fact No. 53 in our review of the trial court's orders.

Respondent-mother further argues that Finding of Fact No. 53 is "inaccurate," in that "the problems that led to DSS custody did not all exist unabated as of the permanency planning hearing." These problems need not exist "unabated" in order for them to still exist. The portion of Finding of Fact No. 53 relating to ongoing substance abuse issues is supported by other findings in the order, including that respondent-mother "was unable to keep her weekly visits [with the children] as she was reporting . . . an inability to take her drug screens . . . and failing drug screens," that respondent-mother was referred to inpatient treatment after "fail[ing] her first screen for THC and alcohol," and that respondent-mother had not completed her substance abuse treatment. Respondent-mother does not dispute the validity of these findings, and we conclude that the trial court's finding that respondent-mother's substance abuse issues still existed at the time of the permanency planning hearing was supported by competent evidence.

We further conclude that the trial court's findings support its conclusion that efforts to reunite the children with respondent-mother would be futile or inconsistent with the children's health, safety, and need for a safe, permanent home within a reasonable period of time. The trial court recounted various problems the children

have dealt with, including that Ella has had problems with overeating and "problems in school, academically and with peers," and Roger has also had problems with overeating and was on medication to help deal with tantrums. After recounting respondent-mother's ongoing substance abuse issues, the trial court found that respondent-mother "seems unable to meet her own needs and it seems unlikely that she will be able to meet the needs of two children with their own significant needs" and "[R]espondent mother is still attempting to resolve her 14 charges of child abuse."

Furthermore, the trial court found that "respondent parents have continued to have contact with each other despite their lengthy history of domestic violence and domestic violence protective orders." All of these findings demonstrated that respondents have not successfully dealt with the issues leading to the removal of the children from the home, and supported a conclusion that reunification would be inconsistent with the children's health, safety, and need for a safe, permanent home within a reasonable period of time. As a result, the trial court did not err in ceasing reunification efforts and respondent-mother's argument is overruled.

*II*

Respondent-mother next contends the trial court erred in finding that grounds existed to terminate her parental rights. We disagree.

> At the adjudicatory stage, the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist. If the trial court concludes that the

> petitioner has proven grounds for termination, this Court must determine on appeal whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law. Factual findings that are supported by the evidence are binding on appeal, even though there may be evidence to the contrary. Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.
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> Under N.C. Gen. Stat. § 7B-1111(a), the trial court need only find that one statutory ground for termination exists in order to proceed to the dispositional phase and decide if termination is in the child's best interests.

*In re L.A.B.*, 178 N.C. App. 295, 298–99, 631 S.E.2d 61, 64 (2006) (internal citations, quotation marks, and brackets omitted).

Respondent-mother again challenges several of the trial court's findings, including Findings of Fact Nos. 20–22, 26, 29–30, 32–34, 45, 47, 49–51, 54, and 56–58 of the order terminating parental rights as to Ella, and Findings of Fact Nos. 21–23, 30–35, 46, 48, 50–52, 55, and 57–58 of the order terminating parental rights as to Roger. We decline to specifically address most of these findings, as respondent-mother "has failed to specifically argue in her brief that they were unsupported by evidence." *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005); *see In re A.C.*, ___ N.C. App. ___, ___ n.4, 786 S.E.2d 728, 736 n.4 (2016) ("Absent a more particularized argument as to particular facts, we decline to review the findings alluded to in respondent-mother's broadside exceptions." (citation omitted)). Respondent-mother instead advocates for findings that would adopt her testimony

from the termination hearing, which the trial court found not credible. "Issues of credibility and the weight to be given to witness testimony 'must be resolved by the trial court and are not a basis for overturning a finding of fact.' " *A.C.*, ___ N.C. App. at ___ n.4, 786 S.E.2d at 736 n.4 (quoting *Elliott v. Muehlbach*, 173 N.C. App. 709, 714, 620 S.E.2d 266, 270 (2005)).

We will, however, address respondent-mother's contention that the trial court entered numerous irrelevant findings from the past that lack an evidentiary basis and cannot support grounds to terminate parental rights due to their remoteness in time. These challenged findings state that respondents left their children in the care of individuals with known substance-abuse issues, including the maternal grandmother, who abused and sold drugs in her home. The findings further state that respondents have a lengthy Child Protective Services ("CPS") history and that respondent-mother was convicted of misdemeanor child abuse many years ago. Respondent-mother contends that these findings are not supported by evidence from the record. However, respondent-mother ignores the fact that these findings were included in the court's adjudication and disposition orders, to which respondent-mother had stipulated. Respondent-mother's prior stipulation constitutes competent evidence supporting these findings. *See In re Montgomery*, 77 N.C. App. 709, 716, 336 S.E.2d 136, 141 (1985) (upholding findings based on stipulations).

Respondent-mother further argues that the facts described in these findings are too remote in time to support the grounds to terminate parental rights. However, while a trial court may not rely solely on prior events in determining whether there is a probability of repetition of neglect, the court is free to consider historical facts of the case in forming that conclusion. *See In re Ballard*, 311 N.C. 708, 714–15, 319 S.E.2d 227, 231–32 (1984) (holding that while "termination of parental rights for neglect may not be based solely on conditions which existed in the distant past but no longer exist[,]" (citation omitted), "evidence of neglect by a parent prior to losing custody of a child . . . is admissible in subsequent proceedings to terminate parental rights"). Respondent-mother therefore cannot demonstrate that the challenged findings were made in error.

Respondent-mother also challenges Finding of Fact No. 50 of Ella's order and Finding of Fact No. 51 of Roger's order, which state that respondent-mother's oldest child, Trevor, is alleged to have committed several serious crimes in the same trailer park where respondent-mother and the maternal grandmother resided. Respondent-mother contends that she is not responsible for the actions of her adult son, and that this finding is therefore irrelevant. However, respondent-mother ignores the fact that her oldest child was a juvenile at the time of the termination hearing and at the times he allegedly committed criminal offenses. Respondent-mother's contention that the criminal actions of a juvenile under her care are "not relevant" is therefore meritless.

Next, respondent-mother contends that the trial court erred in concluding that neglect existed as grounds to terminate her parental rights. Again, we disagree.

A trial court is permitted to terminate parental rights upon finding that the parent has neglected the juvenile. N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is, in part, one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15) (2015).

In the instant case, the trial court found that DSS initially became involved with the family in 2002 because of domestic violence and substance abuse. Those same issues led to Ella being adjudicated neglected in May 2008, and to both Ella and Roger being adjudicated neglected on 29 April 2014. In its termination orders, the trial court found that respondent-mother had not completed any of the substance abuse treatment programs recommended for her and that she had experienced relapses and failed alcohol and drug tests. Respondent-mother denied having a substance abuse issue despite these failed tests. Furthermore, the trial court found that, despite the fact respondent-mother had a DVPO taken out against respondent-father and had completed domestic violence classes, respondent-mother continued to have contact with respondent-father, who had not engaged in services to address his domestic violence issues. Respondent-mother consistently told DSS that she was not

in contact with respondent-father, and she failed to inform DSS that she had sought to set aside the DVPO on several occasions.

Respondent-mother is correct in her contention that she had completed a domestic violence class and had attended some of the recommended programs for her substance abuse issues. However, in light of respondent-mother's lengthy history of these issues, we do not believe that her participation in *some* of the recommended services was enough to show that a repetition of neglect in this case was unlikely. The findings regarding respondent-mother's failure to complete recommended services, to pass drug and alcohol tests, and to avoid contact with her domestic violence perpetrator, along with her refusal to acknowledge the extent of her drug problem and the destructive nature of her relationship with respondent-father, are sufficient to support a conclusion that neglect was likely to continue in the future.

As a result, we conclude the trial court did not err in finding that neglect existed as grounds to terminate respondent-mother's parental rights. Having determined that the trial court correctly found this ground, we need not review the trial court's conclusion that respondent-mother willfully left the juveniles in foster care for twelve months without correcting the conditions that led to their removal from the home. *See In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (noting that a finding of one statutory ground is sufficient to support the termination of parental rights).

*III*

Respondent-mother contends that the evidence did not support a finding that the children are likely to be adopted, and that the trial court therefore abused its discretion in determining termination of her parental rights was in the children's best interests. We disagree.

"If the trial court concludes that the petitioner has met its burden of proving at least one ground for termination, the trial court proceeds to the dispositional phase and decides whether termination is in the best interests of the child." *L.A.B.*, 178 N.C. App. at 299, 631 S.E.2d at 64 (citations omitted). During this dispositional phase,

> [t]he court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. 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) (2015). The trial court's determination that termination of parental rights is in a juvenile's best interests is reviewed for abuse of discretion.

*In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001) (citations omitted). Findings made in a trial court's dispositional ruling are conclusive on appeal if supported by competent evidence. *In re Eckard*, 144 N.C. App. 187, 197, 547 S.E.2d 835, 841, *remanded on other grounds*, 354 N.C. 362, 556 S.E.2d 299 (2001) (citation omitted).

In both orders terminating respondent-mother's parental rights, the trial court found as follows:

> 5. The minor child's bond with respondent mother is unstable due to the respondent mother's ongoing substance abuse issues and her ongoing instability.
>
> . . .
>
> 7. The likelihood of adoption is high.
>
> 8. The only barrier to adoption and achievement of the permanent plan of adoption is termination of parental rights.

Respondent-mother challenges these findings as unsupported by competent evidence. As an initial matter, we note that respondent-mother has not specifically argued that the trial court's Finding of Fact No. 8 was not supported by competent evidence, and she has therefore abandoned her challenge to this finding on appeal.

The trial court's Finding of Fact No. 5, regarding the juveniles' bond with respondent-mother, was supported in part by a report of the guardian ad litem stating that the bond was unstable based on respondent-mother's failure to maintain

sobriety, her past difficulty maintaining stable relationships with the juveniles, and the juveniles' behavior following visits with respondent-mother. In addition, a DSS social worker had previously reported that, after being told by Trevor that respondents were getting back together, Ella expressed mixed feelings due to her uncertainty over whether respondents could be together without fighting and whether they could keep her safe in the home. This constitutes competent evidence supporting the trial court's finding that the bond between respondent-mother and the juveniles was unstable.

Regarding the trial court's Finding of Fact No. 7, the DSS social worker testified, "I think [adoption is] very possible, because they're both really likeable children. They're young and super adorable. They have a lot of -- their own unique talents and gifts, so I think it's definitely possible." The social worker further testified that Roger's foster parents were considering adopting him, and that an earlier foster parent for Ella was interested in adopting her if the two children could not be kept together. The guardian ad litem's report also stated that there was a "good" likelihood of adoption for both children based on their individual growth in their foster placements. Accordingly, there was competent evidence to support the trial court's finding that the likelihood of adoption was high.

After upholding the trial court's dispositional findings, we cannot say that the court abused its discretion in concluding, based on these findings, that termination

of respondent-mother's parental rights was in the juveniles' best interests. As a result, the trial court's orders ceasing reunification efforts and terminating respondent-mother's parental rights are

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).