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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-541

Filed: 15 November 2016

Wake County, Nos. 14 JT 238-39

IN THE MATTER OF: G.H.W., E.M.M.

Appeal by respondents from orders entered 25 February 2016 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 24 October 2016.

Wake County Attorney's Office, by Roger A. Askew, for petitioner-appellee Wake County Human Services.

The Tanner Law Firm, by James E. Tanner III, for respondent-appellant mother.

Jeffrey William Gillette for respondent-appellant father.

Poyner Spruill LLP, by Daniel G. Cahill, for guardian ad litem.

DAVIS, Judge.

B.W. (“Respondent-mother”) appeals from the trial court’s order terminating her parental rights to her children G.H.W. (“Gary”) and E.M.M. (“Erin”).¹ E.M. (“Respondent-father”) appeals from the order terminating his parental rights to Erin, his daughter. After careful review, we affirm the trial court’s orders.

¹ Pseudonyms and initials are used throughout the opinion to protect the identities of the juveniles and for ease of reading. N.C. R. App. P. 3.1(b).

Factual Background

Respondents, who were never married, are the biological parents of Erin. Respondent-mother is Gary's mother, and Gary's father is unknown.

For at least three years, Respondent-mother's struggle with substance abuse and opioid addiction "caused her to miss appointments for the children, get the children to school late or not at all, and leave them with inappropriate caretakers for days at a time." In August 2011, Wake County Human Services ("WCHS") became involved with the family after receiving a report that the children were playing in the road unsupervised. In December 2012, WCHS received a second report that the children were playing in the road unsupervised. At that time, WCHS recommended services for the family after learning about Respondent-mother's substance abuse issues, Gary's inconsistent school attendance, and incidents of domestic violence between Respondents. The children returned to the home in December 2013 after Respondent-mother completed a substance abuse treatment program.

On 22 August 2014, WCHS received a report that the children were being dropped off and picked up at school by unknown individuals. Respondent-father informed WCHS of his alcohol use and that Respondent-mother had resumed her drug use. On 25 August 2014, WCHS filed petitions alleging that Gary and Erin were neglected juveniles. WCHS obtained nonsecure custody of the children the same day. A hearing was held on 30 September 2014 before the Honorable Monica M. Bousman

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in Wake County District Court. On 6 November 2014, the trial court entered an order adjudicating the juveniles to be neglected and ordering Respondents to complete an out-of-home services agreement. The court held a permanency planning review hearing on 12 June 2015, after which it ordered the permanent plan be changed from reunification to adoption.

On 23 October 2015, WCHS filed a motion to terminate the parental rights of Respondent-mother as to both children, alleging that she had neglected them. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2015). WCHS also sought to terminate the parental rights of Respondent-father as to Erin, alleging that: (1) Respondent-father neglected Erin; (2) Respondent-father willfully left Erin 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 her removal; and (3) Erin had been placed in WCHS's custody and Respondent-father, for a continuous period of six months next preceding the filing of the motion, had willfully failed to pay a reasonable portion of the cost of the care of Erin, although physically and financially able to do so. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3).

Following hearings held in October 2015, November 2015, December 2015, and January 2016, the trial court entered orders terminating both Respondents' parental rights on 25 February 2016, after finding the existence of each ground alleged in WCHS's motions.

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With regard to Respondent-mother, the court found that she had tested positive for methadone nine times and tested positive for other drugs eight times during 2015. The court further determined that Respondent-mother had not disclosed to her prescribing physician that she had an addiction to opiates. In addition, the trial court found that Respondent-mother had made contradictory statements about her ongoing drug use and had refused to have a psychiatric evaluation despite the recommendation of her psychologist.

With regard to Respondent-father, the trial court found that he was diagnosed with mild alcohol use disorder and hospitalized for several days due to alcohol use. He was referred for a psychological evaluation but refused to attend the appointment. During a period when he was left in charge of Erin, Respondent-father allowed Erin to stay with his ex-wife. While in her care, Erin was sexually abused by the boyfriend of the ex-wife. Respondent-father learned of the assault but did not report it immediately.

Since the placement of his daughter with WCHS, Respondent-father had been ordered to pay \$110 a month in child support. Although he earned enough money during the six-month period prior to the filing of the petition to terminate his parental rights in order to satisfy his child support obligation, Respondent-father made payments for only two of the six months. Furthermore, during one of his mid-day

visits with his daughter, it was observed that Respondent-father had been drinking alcohol earlier in the day.

In addition, Erin and Gary both described incidents of domestic violence between Respondents. Erin hid during these incidents because she was scared. Respondent-father denied that the incidents ever occurred. The trial court found that Respondent-father lacked an understanding of the severity of Erin's psychological problems and blamed Respondent-mother for Erin being in foster care despite the trauma she suffered while in his care.

Based on these findings of fact, the trial court concluded that sufficient grounds existed to warrant termination of both Respondents' parental rights under N.C. Gen. Stat. § 7B-1111(a). Respondent-mother appealed from the order terminating her parental rights on 10 March 2016, and Respondent-father appealed from the order terminating his parental rights on 23 March 2016.

Analysis

I. Respondent-mother's Appeal

We first address Respondent-mother's contention that the trial court erred in terminating her parental rights without clear, cogent, and convincing evidence of neglect.

"The standard for review in termination of parental rights cases is whether the court's findings of fact are based upon clear, cogent, and convincing evidence and

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whether the findings support the conclusions of law.” *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000) (internal quotation marks and citation omitted). N.C. Gen. Stat. § 7B-1111(a)(1) permits a trial court to terminate parental rights upon finding that the parent has neglected the juvenile. N.C. Gen. Stat. § 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). “If there is no evidence of neglect at the time of the termination proceeding . . . 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 her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted).

While Respondent-mother challenges the trial court’s findings of fact as insufficient, she does not identify any specific finding of fact as lacking in evidentiary support. “An appellate court’s review of the sufficiency of the evidence is limited to those findings of fact specifically assigned as error.” *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005). Given Respondent-mother’s failure to challenge any of the findings as unsupported by the evidence, the trial court’s findings are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)

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(“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.” (citations omitted)).

We conclude that the trial court’s findings of fact support its conclusion that the termination of Respondent-mother’s parental rights on the ground of neglect was appropriate. The findings show that Respondent-mother had struggled with drug addiction since at least 2011 when WCHS first became involved with the family. When the children were removed from the home in August 2014, Respondent-mother was still using drugs, was incarcerated for failing to appear, and had charges pending against her for possession of drug paraphernalia and driving while license revoked.

Although Respondent-mother initially “showed promise in being able to correct the conditions that brought her children into foster care[,]” she subsequently failed eight random drug tests between February and July 2015. Some, but not all, of those failed drug tests could have resulted from Respondent-mother taking opiates prescribed as pain treatment for medical conditions. Respondent-mother never disclosed to any of her medical providers that she was taking methadone or that she was addicted to opiates. She refused to get a recommended psychiatric evaluation, infrequently attended programs to address her substance abuse, and made contradictory statements throughout the case about her drug use.

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These findings regarding Respondent-mother's struggles with drug use throughout her involvement with WCHS — coupled with her failure to consistently attend treatment programs recommended for her — support the trial court's conclusion that a repetition of neglect was likely if the juveniles were returned to Respondent-mother's care. Accordingly, we affirm the trial court's order terminating Respondent-mother's parental rights to Gary and Erin.

II. Respondent-father's Appeal

Respondent-father's appellate counsel has filed a no-merit brief pursuant to Rule 3.1(d) of the North Carolina Rules of Appellate Procedure, stating that, after conscientious and thorough review of the record on appeal, he has concluded that there is no issue on which we might grant relief to his client.² We agree.

After careful review, we are unable to find any prejudicial error by the trial court in ordering termination of Respondent-father's parental rights to Erin. Our review of the record reveals that the termination order includes sufficient findings of fact that are based on clear, cogent, and convincing evidence and support the trial court's conclusion that Respondent-father had for a continuous period of six months before the filing of the motion willfully failed to pay a reasonable portion of the cost of care for Erin despite his ability to do so. *See* N.C. Gen. Stat. § 7B-1111(a)(3). The

² In accordance with Rule 3.1(d), appellate counsel provided Respondent-father with copies of the no-merit brief, trial transcript, and record on appeal and advised him of his right to file a *pro se* brief with this Court. However, Respondent-father has failed to file such a brief.

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trial court's finding of this statutory ground for termination by itself supports the termination of Respondent-father's parental rights. *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) (“[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.” (citation and quotation marks omitted)), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). Finally, the trial court made appropriate findings in determining that the termination of Respondent-father's parental rights was in the best interests of Erin. *See* N.C. Gen. Stat. § 7B-1110(a) (2015).

Conclusion

For the reasons stated above, we affirm the trial court's 25 February 2016 orders.

AFFIRMED.

Chief Judge MCGEE and Judge ELMORE concur.

Report per Rule 30(e).