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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-550

Filed: 6 December 2016

Duplin County, No. 13 JT 80

IN RE: H.H.

Appeal by respondent from order entered 4 March 2016 by Judge Carol A. Jones in Duplin County District Court. Heard in the Court of Appeals 21 November 2016.

*Elizabeth Myrick Boone for petitioner-appellee Duplin County Department of Social Services.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for guardian ad litem.*

*Peter Wood for respondent-appellant.*

TYSON, Judge.

Respondent, the mother of the juvenile H.H., appeals from an order terminating her parental rights. We affirm.

I. Factual Background

On 10 December 2013, Duplin County Department of Social Services (“DSS”) filed a petition alleging H.H. was a neglected and dependent juvenile. DSS had received a report asserting the juvenile was living in an injurious environment. Respondent and the juvenile’s father allegedly were not stable enough to care for a

young baby. DSS could not initially locate the family. When DSS finally located them, they were living in a camper, which was leaking from a roof or vent. The five-month-old juvenile was extremely dirty.

DSS's petition asserted past involvement with H.H.'s parents due to reports of drug use, mental capacity, and lack of housing. Respondent's two oldest children had been placed into guardianship with a paternal aunt and uncle, and a third child had also been removed from her care. DSS stated Respondent had previously been diagnosed as mildly mentally retarded, and raised concerns about her ability to parent independently. DSS sought the court's intervention and obtained non-secure custody of H.H. On 11 April 2014, H.H. was adjudicated a neglected and dependent juvenile.

On 13 January 2015, the trial court ceased reunification efforts and changed the permanent plan for the juvenile to adoption. On 27 February 2015, DSS filed its petition to terminate Respondent's parental rights alleging neglect, failure to make reasonable progress, failure to pay support, and dependency pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3) and (6) (2015). On 4 March 2016, the trial court terminated Respondent's parental rights pursuant to the four grounds alleged in the petition. Respondent appeals.

## II. Issue

Respondent argues the trial court erred by concluding that grounds existed to terminate her parental rights.

III. Standard of Review

On appeal from the trial court's disposition order, we must determine (1) whether the trial court's findings of fact are supported by clear and convincing evidence, and (2) whether its conclusions of law are supported by the findings. Unchallenged findings are binding on appeal. The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*.

*In re J.D.R.*, 239 N.C. App. 63, 66, 768 S.E.2d 172, 174-75 (2015) (citations omitted).

IV. Analysis

N.C. Gen. Stat. § 7B-1111 provides the statutory grounds for terminating parental rights. A finding, supported by clear and convincing evidence, of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990).

The district court concluded grounds existed to terminate Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6). Pursuant to this subsection, the trial court may terminate parental rights where:

the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition

that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6). A dependent juvenile is defined as “[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) the juvenile’s parent, guardian, or custodian is unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” N.C. Gen. Stat. § 7B-101(9) (2015).

“In determining whether a juvenile is dependent, ‘the trial court must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.’” *In re B.M.*, 183 N.C. App. 84, 90, 643 S.E.2d 644, 648 (2007) (quoting *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005)).

In support of its conclusion that grounds existed to terminate Respondent’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), the trial court found as fact that:

14. During previous involvement with the Department, the respondent mother was diagnosed as mildly mentally retarded and the Department has concerns about her ability to parent independently.

. . . .

16. The camper the family was residing at did not meet

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minimum standards as it was leaking water from the vents. There was no running water or electricity but there was a drop cord connected to a home nearby the camper.

17. The child was extremely dirty with her hair matted and with feces under her finger nails, toe nails and belly button. She had cradle cap, cross-eyes and a severe flat spot on the back of her head. She also had bites on her upper torso [and] back of her arms.

18. The respondent mother . . . could not agree to a placement outside of the home so the child was placed in foster care on December 10, 2013. No appropriate alternative family placement could be located for the child during the entire case.

. . . .

21. The respondent mother completed her psychological evaluation on February 7, 2014 at Coastal Horizons. The evaluation reported that the respondent mother should remain a constant figure in her child's life but that it was likely that she would require assistance in order to play a primary caregiver role. The evaluation also stated that it was questionable whether the respondent mother had the cognitive ability and judgment to navigate the day to day problems of parenting young children on her own.

. . . .

29. The child of this action is dependent . . . in that her parents are unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

With the exception of finding number 29, Respondent does not challenge the trial court's findings, and they are binding on appeal. *See Koufman v. Koufman*, 330 N.C.

93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged findings are deemed supported by competent evidence and are binding on appeal).

Respondent solely challenges the relevant part of finding number 29 concerning alternative child care arrangements. Respondent claims that she suggested two appropriate placements for the juvenile, and thus the Court erred by finding that she lacked an alternative child care arrangement. “Our courts have . . . 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).

The first caregiver named by Respondent was her uncle. However, Respondent cites no evidence in the record to support her assertion that she identified any uncle as a potential caregiver for H.H. Furthermore, in citing the uncle as a viable caregiver in her brief, Respondent refers to testimony in the record in which DSS purportedly “ruled out [a] perfectly valid alternative caregiver arrangement” in Burgaw, North Carolina.

At the termination hearing, a DSS social worker testified that Respondent lived with cousins in Burgaw, and a home study was conducted to determine if any of the cousins would be appropriate to supervise Respondent. DSS determined the home was not appropriate because too many people lived in the home. It is unclear whether this home was proffered by Respondent to satisfy her requirement to obtain

stable housing, or whether it was proposed as a potential relative placement for the juvenile. In either case, it was permissible for the trial court to determine, based on DSS's testimony, that the home was not a viable placement for the juvenile. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (it is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.").

The second potential placement cited by Respondent in her brief is the home of Jason and Shannon Thompson, who are also Respondent's cousins. Regarding the Thompsons, the trial court made the following finding of fact at the adjudication of neglect:

Jason and Shannon Thompson are cousins of the respondent mother. They have requested placement of the juvenile *but the respondent does not want the juvenile placed with the Thompsons*. A home study was conducted on the Thompsons [and] it was approved for placement but the Department had concerns about the limited income into the home. The Department also recommended keeping the juvenile in the current foster home since the juvenile was placed with a paramedic due to all the juvenile's medical issues.

(emphasis supplied). Respondent argues there is "no requirement that a relative have a certain income level or be a paramedic before being approved for placement." Respondent's argument is misplaced. Respondent fails to acknowledge the court's finding, as well as additional references found throughout the record, that the

juvenile's potential placement with the Thompsons would be against her wishes. These findings wholly undermine her claim that she identified the Thompsons as a viable alternative placement, and further establish that she did not suggest an appropriate alternative placement to the court. We hold the trial court did not err by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) to terminate Respondent's parental rights.

Respondent also argues the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (3) to terminate her parental rights. However, because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) to support the trial court's order, we need not address the remaining grounds found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

#### V. Conclusion

Clear and convincing evidence supports the trial court's finding that Respondent is "incapable of providing for the proper care and supervision of the juvenile . . . and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-1111(a)(6). The court's findings support its conclusion that grounds existed to terminate Respondent's parental rights. We affirm the trial court's order terminating Respondent's parental rights.

AFFIRMED.



IN RE: H.H.

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Judges BRYANT and McCULLOUGH concur.

Report per Rule 30(e).