IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1241

Filed: 18 July 2017

Bladen County, No. 13 JA 37, 15 JA 06

IN THE MATTER OF: H.S., a minor child; D.S., a minor child

Appeal by respondent from order entered 14 July 2016 by Judge William F. Fairley in District Court, Bladen County. Heard in the Court of Appeals 29 June 2017.

Johnson & Johnson Attorneys at Law PLLC, by William L. Johnson III, for petitioner-appellee Bladen County Department of Social Services.

Appellate Defender Glenn Gerding by, Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant father.

Ellis & Winters LLP, by Jennifer M. Hall, for guardian ad litem.

STROUD, Judge.

Respondent, the father of the child at issue, appeals from an order ceasing reunification efforts. After careful review, we affirm.

On 25 February 2015, the Bladen County Department of Social Services ("DSS") filed a petition alleging that Dakota[1] was a neglected and dependent juvenile.[2] DSS filed the petition concerning Dakota after it received a report on 4 February 2015 that Dakota had tested positive at birth for methadone and benzodiazepines. The report claimed that Dakota's mother appeared to be "emotionally unstable and the reporter does not feel comfortable sending the baby home with the mother." While Dakota was still in the hospital being weaned off the drugs in her system, DSS visited the separate homes of both parents and found neither parent prepared to care for Dakota. Upon Dakota's release from the hospital, she was placed in kinship care. DSS obtained non-secure custody of Dakota. Respondent and the mother were given a case plan, which included attending parenting classes and having the ability to care for a newborn child.

On 15 May 2015, Dakota was adjudicated a dependent juvenile based on stipulations made by the parties. Although initially placed in kinship care, Dakota was eventually placed in foster care with the same family to which the court granted guardianship over her older sister, Holly. Dakota's mother passed away, and on 21 January 2016, the district court entered a permanency planning review order found

[1] Pseudonyms are used to protect the identities of the minors involved.

[2] DSS had previously been involved with respondent's older child, Holly, who was eventually placed into guardianship with her foster parents. *See In Re H.S.*, ___ N.C. App. ___, 795 S.E.2d 831 (2017) (unpublished).

that respondent's failure to make progress, along with the continued instability of his home and childcare arrangements, constituted "actions inconsistent with and a waiver of his constitutionally protected status as a parent[.]" The district court determined that the permanent plan for Dakota should remain as it was, adoption with a secondary plan of custody or guardianship with a court-approved caregiver. On 14 July 2016, the district court awarded guardianship of Dakota to her foster parents and ordered there need not be further review hearings. Respondent appeals.

Respondent's only argument on appeal is that the trial court erred by effectively ceasing reunification efforts, and this was improper because reunification is the "default goal" in juvenile cases and the findings of fact did not support the conclusion that reunification would be "unsuccessful[.]" (Original in all caps.)

> This Court reviews an order that ceases 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. At the disposition stage, the trial court solely considers the best interests of the child. Nonetheless, facts found by the trial court are binding absent a showing of an abuse of discretion.

In re I.R.C., 214 N.C. App. 358, 361, 714 S.E.2d 495, 497 (2011) (citations and quotation marks omitted).

> At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan. Reunification shall remain a

> primary or secondary plan unless the court made findings under G.S. 7B-901(c) or *makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety*. The court shall order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.

N.C. Gen. Stat. § 7B-906.2(b) (2015) (emphasis added).

Respondent does not challenge the trial court's findings of fact so they are binding on this appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("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.") Here, the trial court found that at the time the petition was filed in this case respondent was incarcerated; when a home visit had been scheduled "the home was disheveled and neither of the proposed bedrooms for the girls were in any shape to be occupied[;]" respondent's home is still not in a state for Dakota to live there; respondent has no driver's license due to a conviction and it is unknown when and if he will be able to drive and thus he has no way to transport Dakota, respondent is not employed. While some of the trial court's findings of fact were incorporated from a prior order, respondent does not challenge the trial court's incorporation of those facts nor does respondent contend any changes have occurred that render those facts

no longer true; for example, the home was in no state for Dakota in early 2015 and was still not suitable for a child in mid-2016.

Essentially, respondent's main contention is that his situation has not gotten significantly worse, and thus DSS should continue reunification efforts because that is the "default goal[.]" But the ultimate "default goal" is Dakota's well-being. *See In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984) ("Our discussion would not be complete unless we re-emphasized the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody, to wit, that the best interest of the child is the polar star.") The trial court determined that respondent has "acted in a manner inconsistent with the health and safety of the juveniles" and that has not changed. The trial court made adequate findings of fact to support ceasing reunification efforts under North Carolina General Statute § 7B-906.2(b). *See* N.C. Gen. Stat. § 7B-906.2. Therefore, this argument is overruled.

We affirm.

AFFIRMED.

Chief Judge McGEE and Judge ARROWOOD concur.

Report per Rule 30(e).