IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-971

Filed: 21 March 2017

Watauga County, Nos. 14 JT 53-55

IN THE MATTER OF: C.C., C.C., C.C.

Appeal by respondent-mother from orders entered 25 May 2016 by Judge F. Warren Hughes in District Court, Watauga County. Heard in the Court of Appeals 27 February 2017.

Eggers, Eggers, Eggers & Eggers, PLLC, by Kimberly M. Eggers, for petitioner-appellee Watauga County Department of Social Services.

J. Lee Gilliam for respondent-appellant mother.

Christina Freeman Pearsall for guardian ad litem.

STROUD, Judge.

Respondent appeals from orders terminating her parental rights to her children "Camryn," "Conner," and "Cara."[1] The father is not a party to this appeal. For the reasons set forth below, we affirm the trial court's orders.

I. Background

The family has a long history with social services. On 5 October 2012, the Avery County Department of Social Services ("ACDSS") obtained nonsecure custody

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

of Camryn and Conner. On 16 January 2013, Camryn and Conner were returned to the home for a trial placement. Cara was born in May 2013. On 27 August 2013, ACDSS learned that respondent had been jailed in Avery County for a probation violation after she tested positive for amphetamines and methamphetamines. ACDSS obtained nonsecure custody of Cara on that date and placed the three children in their father's home. The children were returned to respondent's care on 18 October 2013 after the father tested positive for methamphetamines and amphetamines. In January 2014, respondent was again jailed after testing positive for hydrocodone, and the children were removed from the home and placed with their maternal grandmother. The children were returned to respondent's care for a trial home placement in March 2014, but were removed from respondent's care in May 2014 after she tested positive for alcohol. On 2 September 2014, the Avery County District Court returned legal and physical custody of the children to their parents, who were then living in Watauga County.

On or about 17 October 2014, the Watauga County Department of Social Services ("WCDSS") received a report alleging drug abuse and domestic violence in the family's home. On 27 October 2014, WCDSS filed petitions alleging that the children were neglected and dependent. WCDSS obtained nonsecure custody of the children on 31 October 2014. Following a 10 November 2014 hearing, the trial court entered orders on 16 December 2014 adjudicating the children to be neglected and

dependent. Respondent entered into a case plan requiring her to complete a substance abuse assessment and follow all recommendations resulting therefrom, submit to drug screens as requested by WCDSS, participate in substance abuse treatment, and complete a full psychological evaluation. The trial court held a permanency planning hearing on 27 April 2015, after which it entered orders on or about 28 May 2015 changing the permanent plan from reunification to adoption.

On 7 December 2015, WCDSS filed motions to terminate parental rights to all three children, alleging as grounds to terminate respondent's parental rights that: (1) respondent neglected the juveniles; (2) respondent willfully left the 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; (3) respondent was incapable of providing for the care and supervision of the juveniles such that the juveniles were dependent; and (4) the juveniles had been placed in WCDSS's custody and respondent, for a continuous period of six months next preceding the filing of the motions, 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), (6) (2015). At a 16 February 2016 hearing on the termination motions, Judge Hal G. Harrison recused himself from the case and continued the case to 5 April 2016, with a contingent date of 8 March 2016 if no other judge would be available on 5 April. After it was determined that no other

judge would be available on 5 April, the hearing on the termination motions was scheduled for 8 March. On 4 March 2016, respondent filed a motion to continue the hearing until after 5 April. On 8 March 2016, the trial court denied the motion to continue and proceeded with the termination hearing on that date. On 25 May 2016, the trial court entered orders terminating respondent's parental rights to the juveniles after adjudicating the existence of the first three grounds alleged in WCDSS's motions. Respondent timely filed notice of appeal.

II. Denial of Motion for Continuance

Respondent first contends that the trial court abused its discretion in denying her motion for continuance. We disagree.

> A trial court's decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation. . . . Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.

In re C.J.H., __ N.C. App. __, __, 772 S.E.2d 82, 86 (2015) (citations and quotation marks omitted).

N.C. Gen. Stat. § 7B-1109(a) (2015) sets forth the procedures for an adjudicatory hearing on termination and states that such a hearing "shall be held . . . no later than 90 days from the filing of the petition or motion unless the judge

pursuant to subsection (d) of this section orders that it be held at a later time." Subsection (d) of that statute provides, in relevant part, that "[c]ontinuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance." N.C. Gen. Stat. § 7B-1109(d).

In the present case, the motions for termination of parental rights were filed on 7 December 2015. On 4 March 2016, 88 days after the filing of the petition, respondent moved to continue the termination hearing, arguing that proceeding on 8 March

> would greatly harm her chances of success in this matter in that it will hinder her ability to present certain evidence at the hearing; it will hinder her ability to locate or notify potential witnesses that may be called to testify in the hearing; it will hinder her ability to make certain arguments regarding the adjudication of the matter, and; it will hinder her ability to make certain arguments regarding the disposition of the matter.

In arguing the motion in open court on 8 March, 92 days after the petition had been filed, respondent's counsel stated that respondent was due to be released from confinement in a week, and that continuing the hearing until after that point would allow respondent to present evidence regarding "how she's going to progress, what her plans are as far as having a home and having enough support for these children." Respondent was present for the hearing. In denying the motion, the trial court found:

> Neither counsel for the respondent mother nor counsel for the respondent father have provided any evidence to the court this date of any potential witnesses that are unavailable . . . or any other information or evidence[ ] that [would allow] the court [to] make a finding that either respondent mother or the respondent father would be hindered in their ability to prepare for trial of this matter . . . nor have they shown any facts which would constitute extraordinary circumstances necessitating a continuance of this matter.

Respondent seeks to compare her situation to *In re S.D.*, __ N.C. App. __, 776 S.E.2d 862 (2015), but the facts here are simply not comparable. In that case, on the date of the termination hearing, the respondent-mother was in jail awaiting disposition of her criminal charges, which was expected to happen the next week, and this Court noted that "[w]e cannot discern based upon the record why the trial court did not wait for [the father's] court date to find out if respondent would actually be subject to further incarceration or if she would be able to resolve the criminal charges as anticipated." *Id.* at __, 776 S.E.2d at 865. In *In re S.D.*, the social worker confirmed that the respondent-mother's criminal attorney expected her to enter a plea at that time for time served, so she would be released. *Id.* at __, 776 S.E.2d at 864-65.

But the respondent-mother in *In re S.D.* did not have the extensive record of years of substance abuse, periods of incarceration, and prior DSS involvement as in this case. *Id.* at __, 776 S.E.2d at 864. This Court reversed because the respondent-mother had actually done essentially everything required of her regarding visitation, employment, assessments, therapy, and parenting classes. *Id.* at __, 776 S.E.2d at

863-67. There was no indication that the respondent mother had a substance abuse problem. *Id.* at __, 776 S.E.2d at 864. Only her housing situation when released from jail remained in question, but that question would most likely be resolved very soon, upon her release. *Id.* at __, 776 S.E.2d at 863-64. And the hearing was held weeks before 90 days from the date of filing of the termination petition. *Id.* at __, 776 S.E.2d at 862-63, 866. This Court noted that

> we are concerned that the respondent's parental rights seem to have been terminated in large part because of the "possibility" that she may be incarcerated. The trial court may not have found the evidence from the social worker or respondent to be credible, but there was an "indication" of when the criminal matters would be resolved, and it was expected to happen very soon.[2] Certainly, we agree that it is not reasonable to wait for years for the criminal process to conclude, but the evidence here shows that respondent's criminal matters might be resolved the very next week.

Id. at __, 776 S.E.2d at 865.

Here, respondent's incarceration was one of many over the years resulting from one of her relapses into substance abuse, and it was by no means a primary reason, or even a significant reason, for the termination of her rights. Given that 92 days had passed since the filing of the motions to terminate parental rights when the hearing began on 8 March 2016, that respondent was present for the hearing, and that counsel for the parents did not identify any witnesses or evidence unavailable

[2] The trial court made a finding that "The Court was not given any indication of when this would occur[,]" which we held was "not supported by the evidence." *Id.* at __, 776 S.E.2d at 864.

on 8 March which would become available at a later date, we cannot say that the trial court abused its discretion in denying the motion to continue.

III. Grounds to Terminate: Dependency

Respondent next contends that the trial court erred in finding that grounds existed to terminate her parental rights. We find that the trial court correctly found grounds to terminate respondent's parental rights on the basis of dependency.

> 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) (citations, quotation marks, and brackets omitted).

N.C. Gen. Stat. § 7B-1111(a)(6) permits a trial court to terminate parental rights upon finding:

> That 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.

A "dependent juvenile" is defined in part as "[a] juvenile in need of assistance or placement because . . . 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).

The trial court's orders state that respondent's "incapability is the result of substance abuse . . . and other conditions as set forth herein which have rendered the Respondent Parents unable or unavailable to parent the Juvenile[s]."[3] In regard to respondent's substance abuse issues, the trial court made the following relevant findings[4]:

> b. . . . The [Juveniles] [were] placed in the non-secure custody of the Avery County Department of Social Services on or about the 27th day of August, 2013, and at that time, the Respondent Mother tested positive for methamphetamines. . . .
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> d. . . . [D]uring the approximate twenty-two (22) months

[3] Quoted material pertaining to the termination of respondent's parental rights is excerpted from the order terminating parental rights to Camryn. The orders terminating respondent's parental rights to Conner and Cara are substantially similar.

[4] We have altered the order of the findings so as to place them chronologically.

[Camryn and Conner] were in the custody of the Avery County Department of Social Services and the approximate twelve (12) months [Cara] was in the custody of the Avery Country Department of Social Services, [the Juveniles] were routinely removed from [the] home of one Respondent Parent to the other because of substance abuse issues. The Avery County Department of Social Services would relocate the [Juveniles] to the non-offending parent until that custodial parent subsequently tested positive for controlled substances. . . .

e. That on or about October 23, 2014, which was less than seven (7) weeks after the Juvenile[s'] reunification with Respondent Parents, the Watauga County Department of Social Services was forced to take custody once again because of inappropriate supervision by the Respondent Parents, domestic violence between the Respondent Parents and substance abuse of the Respondent Parents;

c. . . . [O]n October 27, 2014, a Petition was filed in Watauga County District Court alleging Neglect and Dependency as to the [Juveniles.] . . . Said Petition was based on inappropriate supervision by the Respondent Parents, domestic violence between the Respondent Parents and substance abuse of the Respondent Parents;

i. The Respondent Mother was . . . in the Watauga County Drug Treatment Court Program. However, she was unsuccessful in completing the program, having only completed phase 2 of four (4) phases of the Watauga County Drug Treatment Court Program;

j. While the Respondent Mother successfully completed the 14-day Alcoholism and Drug Abuse Council (A.D.A.C.) program as well as a ninety (90) day D.A.R.T. Cherry Treatment program, in less than ten (10) days from her release from the D.A.R.T. Cherry Treatment program on March 31, 2015, the Respondent Mother was arrested once again for a parole violation alleging use of illegal controlled substances. . . .

> k. Based on the history of the Respondent Mother and the Respondent Father in regard to their continued abuse of controlled substances, both in the presence of the minor children and outside of the presence of the minor children, there is a strong probability these actions will continue for the foreseeable future as well as during the most important stages of growth and development for the Juvenile[s]. . . .
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> n. Neither the Respondent Mother nor Respondent Father has made substantial progress on his or her respective case plan despite having had well over twelve (12) months with which to do same;
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> o. Neither the Respondent Mother nor the Respondent Father has made reasonable efforts to comply with his or her respective case plan. Each Respondent Parent was capable of complying with his or her case plan, but each Respondent Parent willfully chose not to comply with correcting the conditions that led to the removal of the [Juveniles] from the custody of the Respondent Parents[.]

Respondent first challenges finding "d.", arguing that the record does not support the court's finding that the children were "routinely removed" from the home of one parent to the other. Instead, respondent contends that the record shows that the children moved from respondent to the father twice and from the father to respondent twice over the course of almost two years, and that this movement could not be characterized as "routine." Perhaps "routine" was not the ideal word choice, since "routine" generally denotes a fixed or planned sequence of events; "repeatedly removed" may convey what happened more accurately. But the nuances of connotation and denotation make no difference here. Respondent fails to

demonstrate how this word choice necessitates a conclusion that this finding is unsupported by the evidence, since the evidence does support a finding of several changes to the children's residence as a result of respondent's or the father's inability to provide proper care for the children. The oldest child had spent nearly half of her life in DSS custody in placements outside of the respondent's home; for the younger children, the percentage was more than 80% of their lives.

Respondent challenges several other findings that are not quoted above. We need not review those findings as they are not necessary to support the trial court's conclusion that the children were dependent. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

Respondent does not challenge the remaining findings quoted above, and they are therefore binding on appeal. *See In re A.R.*, 227 N.C. App. 518, 520, 742 S.E.2d 629, 631 (2013) ("Findings of fact are also binding if they are not challenged on appeal."). These findings show that respondent failed several drug tests since 27 August 2013, despite the fact that refraining from drug use was a term of her probation. Respondent failed to complete a drug treatment program. While respondent successfully completed a different drug treatment program, she was arrested for drug use less than 10 days after having completed the program. These findings support the trial court's conclusion that there existed a reasonable

probability that respondent would remain incapable of providing care for the children for the foreseeable future as a result of her substance abuse.

IV. Alternative Childcare Arrangement

Respondent next contends that the trial court erred in concluding that the children were dependent because it failed to make findings directly addressing whether respondent lacked an appropriate alternative childcare arrangement. Again, we disagree.

In finding dependency under N.C. Gen. Stat. § 7B-101(9)(ii), "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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). "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).

In support of her argument, respondent cites to *In re N.B.*, 200 N.C. App. 773, 688 S.E.2d 713 (2009), in which this Court reversed and remanded because the trial court failed to "make any findings of fact which directly address whether Respondent lacked an appropriate alternative childcare arrangement." *Id.* at 779, 688 S.E.2d at 717. *In re N.B.* is easily distinguishable from the present case. Here, the trial court specifically found that "the Respondent Parents lack an appropriate alternative child

care arrangement." Respondent does not contend that this finding lacked evidentiary support, nor does she direct us to any evidence of record of any alternative child care arrangement which might have been available. The trial court's findings support its conclusion that the children were dependent.

V. Conclusion

In sum, we conclude that the trial court did not abuse its discretion in denying respondent's motion for a continuance and hold that the trial court's findings support its conclusion that grounds to terminate respondent's parental rights existed on the basis of dependency. While respondent also challenges the trial court's conclusions that the grounds for termination listed in N.C. Gen. Stat. § 7B-1111(a)(1) and (2) existed in this case, we need not address those challenges given our decision to uphold the trial court's conclusion that respondent's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(6). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat.] § 7B-1111 is sufficient to support a termination."). As a result, we affirm the trial court's orders terminating respondent's parental rights to the juveniles.

AFFIRMED.

Chief Judge McGEE and Judge McCULLOUGH concur.

Report per Rule 30(e).