An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-280

Filed: 7 November 2017

Mitchell County, Nos. 14 JA 24 and 14 JA 25; 14 JT 24 and 14 J.T. 25

IN THE MATTER OF: S.L.B. and C.A.B.

Appeal by Respondents from orders entered 8 September and 17 October 2016 by Judge Rebecca Eggers-Gryder in District Court, Mitchell County. Heard in the Court of Appeals 5 October 2017.

Grimes Teich Anderson, LLP, by Brian A. Buchanan, for Petitioner-Appellee Mitchell County Department of Social Services.

Leslie Rawls for Respondent-Appellant Father.

Julie C. Boyer for Respondent-Appellant Mother.

Parker Poe Adams & Bernstein LLP, by Eric H. Cottrell, for Guardian ad Litem.

McGEE, Chief Judge.

Respondents appeal from the trial court's orders terminating their parental rights to their minor children, S.L.B. and C.A.B., (together, "the children"). We affirm.

I. Background

The Mitchell County Department of Social Services ("DSS") filed juvenile petitions on 3 June 2014, alleging that S.L.B. and C.A.B. were neglected and dependent. The petitions indicated that DSS had been providing services to the family for more than two years, with the most recent in-home services beginning in October 2013 and focusing on "Emotional/Mental Health, Substance Use, Family Relationships, Domestic Discord, and Child Characteristics[.]" Respondent-Mother had issues with drugs, particularly methamphetamine, while Respondent-Father engaged in "excessive alcohol abuse." DSS alleged that Respondents had violated multiple safety plans and that the children had "been exposed to domestic violence, high risk situations and impaired caregivers." DSS obtained nonsecure custody of the children and placed them in foster care.

The trial court entered separate orders on 19 March 2015, concluding that S.L.B. and C.A.B. were neglected and dependent juveniles. The court entered disposition orders on 20 April 2015. The orders set the permanent plans for S.L.B. and C.A.B. as reunification with a parent. Respondents were ordered to comply with their DSS-established case plans, which were incorporated into the disposition orders in a timely manner.

The trial court entered permanency planning orders on 19 August 2015, changing the permanent plan for S.L.B. and C.A.B. to adoption. The orders found that Respondent-Mother had failed or refused to submit to multiple drug screens and

had relapsed. In addition, Respondent-Father had been charged with several new drug-related offenses and dropped out of his substance abuse treatment program. DSS was ordered to initiate termination proceedings within sixty days.

DSS filed motions in the cause on 12 January 2016 to terminate Respondents' parental rights as to S.L.B. and C.A.B. on the grounds of neglect, failure to make reasonable progress, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2), (6) (2015). The motions were heard on 28 July, 16 August, 18 August, and 24 August 2016. The trial court entered adjudication orders on 8 September 2016, concluding that Respondents' parental rights were subject to termination based upon all of the grounds alleged by DSS. After a separate dispositional hearing, the trial court entered orders on 17 October 2016, concluding that termination of Respondents' parental rights was in S.L.B.'s and C.A.B.'s best interests. Respondents appeal.

II. Standard of Review

> The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (citation and quotation marks omitted) (2004).

> It is well settled that findings of fact made by the trial court

> in a termination of parental rights proceeding are binding "where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." Findings of fact are also binding if they are not challenged on appeal. Moreover, if such findings sufficiently support one ground for termination, this Court need not address a respondent's challenges to findings of fact that support alternate grounds for termination.

In re N.T.U., 234 N.C. App. 722, 733–34, 760 S.E.2d 49, 57 (2014) (citations omitted).

III. Grounds for Termination

Respondent-Father argues the trial court erred by concluding that three grounds existed to terminate his parental rights. We disagree.

Respondent-Mother makes no argument that the trial court erred in concluding that grounds existed to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), (2), or (6). Respondent-Mother has therefore abandoned any challenge to the 8 September 2016 adjudication order which found three grounds to terminate her parental rights to the children. N.C. R. App. P. Rule 28(a); *In re J.D.R.*, 239 N.C. App. 63, 66, 768 S.E.2d 172, 174 (2015).

Although the trial court found three grounds upon which to terminate Respondent-Father's parental rights, this Court need only determine that one of those grounds was supported by the evidence and findings of fact. *In re Huff*, 140 N.C. App. 288, 293, 536 S.E.2d 838, 842 (2000). Pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), a trial court may terminate parental rights upon finding

> [t]hat 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) (2015).

When 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 P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005). Respondent-Father does not dispute that he was incapable of caring for the children, but he disputes the trial court's determination that he lacked alternative child care arrangements. Respondent-Father contends that his aunt ("G.C.") was proffered as an appropriate alternative child care arrangement.

However, G.C. was initially determined to be an inappropriate placement by the trial court in its 19 August 2015 permanency planning order, in which the trial

court also ceased reunification efforts with Respondents.[1] In that order, the court found:

> At the disposition hearing [] [R]espondent-[F]ather requested that [G.C.] be considered for a kinship placement; a home study was performed and the report of the home study was offered into evidence; [t]he residence was located in Yancey County; the residence did not have any finished bedrooms for the children and was under construction at the time of the home study; [t]he social workers pointed out that a large gap in the porch railing could allow one of the juveniles to fall through, and [G.C.] responded that the children had never had a problem falling off the porch when they ha[d] been there before; [G.C.] testified that she would be willing to provide care for the juveniles; however, [G.C.] has been residing part of the time in North Carolina and the remaining time she spends in Nevada. Although she testified that she is now a full-time resident of North Carolina, [G.C.] admitted that her driver's license was issued by the state of Nevada, and her vehicles are still registered and tagged with the state of Nevada; [G.C.] has provided kinship placement and safety placement for the juveniles in the past, but she has never indicated that she would be willing to be a permanent placement for the juveniles. During the home study, [G.C.] did not inform the social workers that [] [R]espondent [F]ather had dropped out of his treatment facility and was residing in the residence with her until such time as he is incarcerated on the pending charges. The Department determined that [G.C.]'s home was not appropriate for the juvenile and sibling.

[1] Although Respondents both indicated an intent to appeal the 19 August 2015 permanency planning order and the transcript of the hearing that resulted in the order was made part of the record on appeal, neither Respondent ultimately included this order in their notices of appeal and neither Respondent makes any arguments regarding this order in their respective briefs.

At a July 2016 permanency planning hearing, G.C. was again considered as a placement. In an order entered 28 July 2016, based on the evidence at that hearing, the trial court found that it had "concerns about [G.C.]," that it "did not find her to be an appropriate placement and still doesn't," that G.C. "missed 5-6 opportunities to step in and be a permanent placement[,]" and that the trial court was "concerned for the safety of the [the children] if they were placed in her care in that the [trial] court does not believe [it] can keep the parents away from [the children]." Respondent-Father has not appealed from either of those orders. Further, at the termination hearing, Respondent-Father did not provide additional evidence that reflected circumstances had changed such that G.C. would be considered a viable alternative placement. *See In re L.H.*, 210 N.C. App. 355, 364, 708 S.E.2d 191, 197 (2011) ("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.*").*

At the termination hearing, DSS social worker Josie Davis ("Davis") testified concerning her opinion that G.C. would not be an appropriate placement for the children. A portion of that testimony follows:

> Our primary concern was [G.C.'s] loyalty to [Respondent-Father], which is mentioned in the home study. The fact that she was housing him after his departure from the program. There were concerns also about her income, and not being able to establish exactly where the money was coming from.

. . . .

She was dependent on her friend for a place to stay, for bills to be paid. She was transient between Las Vegas, Nevada and North Carolina, and so there wasn't a clear, kind of, timeline I would say that she was clear on how bills -- how much bills were being paid.

Q. She said that a friend of hers paid her utility bills?

A. As far as I know, that was written in the home study.

Q. Okay. And she said she lived part of the time in Las Vegas?

A. Yes, sir.

Q. Did she say how much time she spends at the home at 90 Maple Springs?

A. During the warmer months, she would spend at 90 Maple Springs. During the colder months, she would be in Las Vegas, Nevada.

Q. Did you have any concerns about the actual residence at 90 Maple Springs, as far as being a place that children would be safe?

A. At the time, they were still doing construction on two bedrooms. Both [S.L.B.'s and C.A.B.'s] bedroom[s were] not livable. To my knowledge, she has since completed those bedrooms. And there was a lot of storage in [S.B.'s] room. It was packed up to the ceiling at the time. The other concern was that the balcony, or the porch, the railing. A child could easily go through the railing.

Q. Do you know if the railing has been fixed?

A. I do not know that.

After Respondent-Father's attorney questioned Davis concerning her determination that G.C. was not an appropriate placement, the following colloquy occurred:

> [Respondent-Father's Attorney]: If you find that the placement's not appropriate, I have no more questions for this witness, Your Honor.
>
> THE COURT: I've heard plenty that it wasn't. *You are welcome to present evidence on why it is*. All right. Do you have any other questions, sir?
>
> [Respondent-Father's Attorney]: No, Your Honor. (Emphasis added).

Based upon the above and additional evidence, the trial court's adjudication order included the following uncontested findings of fact:

> 31. There was no alternative child care arrangement [at the time of a prior order] in that [D.C., Respondent-Mother's mother] was found not to be suitable for long term placement, and the parties could not agree whether the placement should be [G.C.] or [D.C.].
>
> 32. [G.C.] was not in the state at the time the juveniles came into custody.
>
> . . . .
>
> 34. Due to the substance issues of [Respondent-Father], there was no appropriate alternative child care available.
>
> . . . .
>
> 42. When [Respondent-Father] saw the Social Workers at the home of [G.C.] when they went to complete the home study, he lied to the Social Workers.

. . . .

48. and 49. [Respondent-Mother has not found suitable housing for the children despite having been ordered to do so.]

85. . . . . [Respondents] . . . lacked an appropriate alternative child care arrangement[.]

. . . .

88. [Respondents] failure to correct this situation is due to ambivalence and substance abuse issues.

. . . .

92. [Respondent-Father] is not in a position to have the juveniles returned to him.

. . . .

103. [Respondent-Mother's] actions do not address the key problem[] of . . . suitable housing for the juveniles.

. . . .

120. The [trial c]ourt determines that [Respondents] lack appropriate alternative child care arrangements by clear, cogent, and convincing evidence.

. . . .

127. There is concern that the parents were living in the same house with [G.C.], and that there had been an acrimonious relationship between [Respondents] which was one of the reasons for DSS involvement in the first place.

. . . .

> 134. Neither parent is able to have the juveniles placed in their care within the foreseeable future.

Respondent-Father specifically challenges finding 121 as unsupported, arguing the evidence demonstrated that [G.C.] was an appropriate childcare placement.

> 121. The Department has exhausted all reasonable efforts in this matter to prevent or eliminate the need for placement with the Department including but not limited to: referral to support agencies, home service visits, in home services, drug screens, Medicaid, foster care, CFT meetings, meetings with [Respondents] and biological family to assist, home studies and supervised visitations.

Respondent-Father's entire argument in support of his challenge to finding 121 is that because the finding includes "home studies" and subsequent to the home study, G.C. completed some "remodeling" that "created a space to meet the children's needs[,]" DSS has not, in fact, "exhausted all reasonable efforts in this matter to prevent or eliminate the need for placement with the Department[.]" Initially, Respondent-Father does not contest any portion of finding 121 other than the inclusion of "home studies," and does not argue that the additional identified and unidentified measures taken by DSS fail to support the finding that DSS has "exhausted all reasonable efforts in this matter." Nor does Respondent-Father include any citations in support of his argument. Respondent-Father has therefore abandoned this argument. N.C. R. App. P. Rule 28(a) and (b)(6); *J.D.R.*, 239 N.C. App. at 66, 768 S.E.2d at 174.

Assuming *arguendo* Respondent-Father had preserved this argument, he contends that, because DSS did not revisit G.C.'s home after the renovations, the home study was never completed and, therefore, DSS has not exhausted all reasonable efforts to eliminate the need for the children to remain in DSS custody. Respondent-Father further argues that, without finding 121, the remaining findings do not support the trial court's conclusion that Respondent-Father has failed to demonstrate "'the availability to the parent of alternative child care arrangements.'" *P.M.*, 169 N.C. App.at 427, 610 S.E.2d at 406 (citation omitted). However: "It is well settled that findings of fact made by the trial court in a termination of parental rights proceeding are binding 'where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.'" *N.T.U.*, 234 N.C. App. at 733, 760 S.E.2d at 57 (citation omitted). We hold that there is some evidence to support the trial court's finding that "[t]he Department has exhausted all reasonable efforts in this matter to prevent or eliminate the need for placement with the Department[,]" even assuming *arguendo* the evidence might support a different finding, *id.*, and that the findings of fact support the trial court's conclusion that termination was proper pursuant to N.C.G.S. § 7B-1111(a)(6).

IV. Best Interests

Both Respondents argue the trial court erred by concluding that termination was in the children's best interests. We disagree.

In deciding whether terminating parental rights is in a juvenile's best interests, the trial court must consider the following criteria and make findings regarding any 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). Respondents do not contend the trial court failed to make any of the required findings. Instead, they argue the trial court abused its discretion when it concluded that termination was in the children's best interests because G.C. was ready and willing to care for them. However, as explained above, the trial court properly determined that G.C. was not an appropriate placement and, thus, there would be no reason for the court to consider her when examining the children's best interests. Accordingly, Respondents have not shown any abuse of discretion in the trial court's determination that termination was in the children's best interests.

V. Conclusion

The trial court made sufficient findings, supported by competent evidence, that Respondent-Father's rights were subject to termination on the ground of dependency. The trial court did not abuse its discretion by concluding that termination of the parental rights of both Respondents was in the children's best interests. The trial court's orders are affirmed.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).