IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1098

Filed: 17 April 2018

Mecklenburg County, Nos. 16 JT 313–14

IN THE MATTER OF: R.S.O.S., R.E.O.S.

Appeal by respondent-parents from order entered 17 July 2017 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 22 March 2018.

Associate County Attorney Marc S. Gentile for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

J. Thomas Diepenbrock for respondent-appellant mother.

Mercedes O. Chut for respondent-appellant father.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

ELMORE, Judge.

Respondents appeal from an order terminating their parental rights to their minor children R.S.O.S. ("Robert") and R.E.O.S. ("Rhonda").[1] For the reasons stated herein, we affirm.

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

Respondents met at a Super Bowl party in 2013 and were married less than one month later. Rhonda was born in February of 2015, and Robert was born in April of 2016. On 28 June 2016, the Mecklenburg County Department of Social Services, Youth and Family Services ("YFS") received a report that Robert had been taken to the hospital with a skull fracture, six rib fractures in different stages of healing, clavicle injuries, and femur fractures, and that the hospital had determined that Robert's rib and femur injuries were highly specific to non-accidental trauma. Respondent-mother was arrested and charged with three counts of child abuse. YFS obtained nonsecure custody of the juveniles on 30 June 2016. On 1 July 2016, YFS filed a petition alleging that the juveniles were neglected and dependent, and that Robert was also abused.

Following a 17 August 2016 hearing, the trial court entered an order on 10 January 2017 adjudicating Rhonda to be neglected and Robert to be abused and neglected. The order ceased reunification efforts and established a primary plan of guardianship and a secondary plan of adoption. The trial court held a permanency planning hearing on 25 January 2017, after which the court entered an order on 10 February 2017 changing the primary plan to adoption with a secondary plan of custody with a relative or other suitable person.

On 29 December 2016, YFS filed a motion to terminate respondents' parental rights, alleging the grounds of (1) abuse, (2) neglect, (3) dependency, and (4) felony

assault against Robert resulting in a serious bodily injury. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1), (6), (8) (2017). Following a 12 June 2017 hearing on the motion, the trial court entered an order on 17 July 2017 terminating respondents' parental rights after adjudicating the existence of neglect and dependency. Respondents timely filed notice of appeal.

Standard of Review

A proceeding to terminate parental rights involves two separate phases: (1) an adjudicatory phase, where the trial court determines if any statutory grounds exist to terminate parental rights; and (2) a dispositional phase, where the trial court determines if termination is in the juvenile's best interests. *In re D.H.*, 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014). This Court reviews the trial court's adjudicatory decision to determine whether clear, cogent, and convincing evidence supports the findings of fact and whether the findings support the legal conclusions. *In re S.Z.H.*, ___ N.C. App. ___, ___, 785 S.E.2d 341, 345 (2016). If ample competent evidence exists to support the findings, they are binding on appeal, even where contrary evidence exists. *Id.* We review the trial court's legal conclusions *de novo*. *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015).

If the trial court adjudicates the existence of at least one ground for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a), the court enters the dispositional phase to determine whether termination is in the juvenile's best

interests. N.C. Gen. Stat. § 7B-1110 (2017). This Court reviews a trial court's dispositional decision for abuse of discretion. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662, *disc. review denied*, 364 N.C. 326, 700 S.E.2d 921 (2001). "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." *S.Z.H.*, ___ N.C. App. at ___, 785 S.E.2d at 345.

Respondent-Mother's Appeal

Respondent-mother first contends the trial court erred in denying her motion to continue the termination of parental rights hearing. We disagree.

" 'Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court's ruling is not subject to review.' " *In re D.Q.W.*, 167 N.C. App. 38, 40, 604 S.E.2d 675, 676 (2004) (quoting *State v. Taylor*, 354 N.C. 28, 33, 550 S.E.2d 141, 146 (2001), *cert. denied*, 535 U.S. 934, 152 L. Ed. 2d 221 (2002)). "However, if a motion to continue is based on a constitutional right, then the motion presents a question of law which is fully reviewable on appeal." *Id.* at 40–41, 604 S.E.2d at 677 (citations and quotation marks omitted). " 'Continuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it. The chief consideration is whether granting or denying a continuance will further substantial justice.' " *In re Humphrey*,

156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003) (quoting *Doby v. Lowder*, 72 N.C. App. 22, 24, 324 S.E.2d 26, 28 (1984)).

More specifically, the Juvenile Code provides that

> [t]he court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile. Resolution of a pending criminal charge against a respondent arising out of the same transaction or occurrence as the juvenile petition shall not be the sole extraordinary circumstance for granting a continuance.

N.C. Gen. Stat. § 7B-803 (2017).

In the present case, respondent-mother's counsel moved for a continuance at the outset of the 12 June 2017 termination hearing. Counsel requested that the hearing be moved to a date after respondent-mother's 31 July 2017 arraignment in her criminal case, which involved charges brought in response to Robert's injuries. Counsel cited her belief that "at least something significant would occur" at the arraignment "so that [respondent-mother] would be able to fully participate in this hearing without infringing on her Fifth Amendment rights in light of the fact that she has serious felony charges pending against her." Counsel offered no other

explanation for the need to continue the hearing, and the trial court denied the motion.

Given that the only reason offered for seeking a continuance was to allow time for resolution of respondent-mother's criminal charges, and further given that those criminal charges arose from the same facts from which the juvenile petition arose, the Juvenile Code makes clear that respondent-mother did not present an extraordinary circumstance for continuing the hearing. *See* N.C. Gen. Stat. § 7B-803. Moreover, even if we were to review the issue using the "good cause" standard articulated in N.C. Gen. Stat. § 7B-803, respondent-mother still failed to demonstrate that the hearing should be continued until after her arraignment. Counsel made the vague assertion that "something significant" would occur at the arraignment that would then allow respondent-mother to participate in the termination hearing. However, without articulating how respondent-mother would be in a position to participate in the hearing after, but not before, 31 July 2017, counsel failed to demonstrate to the court that there existed good cause to continue the termination hearing. Thus, the trial court did not err in denying respondent-mother's motion to continue.

Respondent-mother next contends that the trial court erred in concluding that grounds existed to terminate her parental rights. We disagree and conclude that the trial court correctly adjudicated the existence of neglect.

Section 7B-1111(a)(1) of our General Statutes 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 . . . or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2017).

> 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).

In the present case, the trial court made the following findings in support of its conclusion that neglect existed as a ground to terminate respondent-mother's parental rights:

> 5. From birth to June 28, 2016, [Robert] lived with his sister, [Rhonda], both of his parents and the maternal grandparents. During this same timeframe, [Robert] and [Rhonda] received intermittent care and supervision from their paternal grandparents.
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> 6. On June 28, 2016, [Robert] was admitted into [Levine Children's Hospital] with a possible femur fracture and evaluated. During his admission, he underwent a skeletal survey due to a suspicion that the femur fracture was caused by non-accidental trauma.
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> 7. On unknown dates and at different points in time, but

all prior to his June 28, 2016 admission to [the hospital], [Robert] sustained nonaccidental and traumatically-induced injuries. . . .

8. [Robert]'s rib fractures were likely inflicted by being squeezed . . . while he was being held. The various lower extremity fractures were likely inflicted by shaking him while holding his legs and are inconsistent with a fall.
. . .

10. On August 17, 2016, [Robert] was adjudicated abused and neglected and [Rhonda] was adjudicated neglected.

11. Case plans for each parent were presented to the court during the dispositional hearing which immediately followed the adjudicatory hearing. The case plans were adopted by the court so that the parents could reduce or eliminate the barriers that were in place and prevented the parents from properly, safely and appropriately parenting their children. The respondent parents' case plans were identical.

12. The respondent parents were mandated to submit to a FIRST (Families in Recovery Stay Together) assessment (which assessed for needs in the areas of domestic violence, mental health and substance abuse) and comply with any and all recommendations; address their mental health needs (comply with medication management and engage in therapy); address parenting (part of which included providing an explanation for how [Robert] sustained his various injuries); obtain and maintain stable, sufficient and appropriate income and housing; maintain regular contact with YFS and GAL; and sign releases in favor of YFS, GAL and their respective attorneys. With regard to visitation, respondent mother was barred from any contact/visitation by the (juvenile) Court, while respondent father was permitted two supervised visits per week for one hour each.

13. Respondent mother was charged criminally with

> multiple counts of Felony Child Abuse Inflicting Serious Injury as a result of [Robert's] injuries. These charges have been pending for several months and, as of the date of this TPR trial, remain pending. She was also barred by the criminal Court from having contact with either juvenile. The pending charges also led to her decision to not engage in any case plan services. Since the children entered YFS custody, mother has not articulated what conditions were present that created a risk that led to the injuries. Due to the lack of engagement in case plan services, the risk of harm has not been alleviated. There is no evidence that the probable resolution of respondent mother's criminal charges would put her in a position to provide safe and appropriate parenting. There is also no evidence that the mother would be able to provide safe and proper care and supervision without engaging in proper services.
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> . . .
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> 22. To date, neither the respondent parents nor any of the four grandparents have demonstrated any awareness of the conditions that existed at the time which created the risk of harm/injury to [Robert] or an awareness of the conditions that allowed the injuries to be inflicted in the first place. Nor has anyone provided a plan that would reduce/ameliorate the risk of harm to either of the juveniles. Moreover, no one (including the parents despite the case plan requirement) has articulated how these injuries were or could have been inflicted. . . .
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> 23. Neither parent has addressed any of the needs/issues that led to the juveniles coming into YFS custody. As a result, the juveniles remain in foster care and there is a high probability of the repetition of neglect.

Respondent-mother does not challenge any of these findings, which are therefore binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The findings show that the children had previously been adjudicated

neglected, and that respondent-mother had done nothing to alleviate the risk of harm in the home. Respondent-mother did not explain Robert's injuries and did not engage in any of her case plan services. While respondent-mother contends that she chose not to engage in her case plan on advice of counsel, the fact remains that her decision not to engage in her case plan supported the trial court's finding that there was a high probability for the repetition of neglect. The above-listed findings demonstrate that the trial court correctly adjudicated the existence of neglect as grounds to terminate respondent-mother's parental rights.

While respondent-mother also challenges the trial court's conclusion that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), we need not review that challenge given our determination that the trial court correctly adjudicated the existence of neglect. *See Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 426 ("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.").

Respondent-Father's Appeal

Respondent-father also contends the trial court erred in concluding that grounds existed to terminate his parental rights. We again conclude that the trial court correctly adjudicated the existence of neglect as grounds to terminate parental rights.

In addition to the above-listed findings, the trial court made the following findings in support of its conclusion that neglect existed as a ground to terminate respondent-father's parental rights:

> 14. Respondent father suffers from depression. He was admitted to a psychiatric ward for psychiatric treatment in late August 2015 due to the severity of his symptoms and the limitation of his ability to function. . . . The discharge recommendations from this hospitalization directed the respondent father to comply with medication management and engage in outpatient therapy. On an unknown date, but prior to October 14, 2016, he stopped complying with both directives.
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> 15. The failure to comply with the August 2015 directives likely contributed to the decompensation of the respondent father's mental state which resulted in his October 14-22, 2016 hospitalization. He was initially involuntarily committed, but did on the first day sign a voluntary admission. During this hospitalization, suicidal ideations were noted. Respondent father also attended numerous group therapy sessions, at least one of which discussed relapse prevention. Upon his discharge, the respondent father was again recommended to engage in outpatient therapy and to comply with medication management.
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> 16. Within two weeks of this discharge, the respondent father tested positive for marijuana.
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> 17. While he was visiting with his children, he exhibited a continuing failure to comprehend the severity of the harm that was inflicted upon the children. With this juvenile court process, the respondent father was expected to demonstrate that he had the protective capacity over his children. During a September 2016 visit, he permitted [Rhonda] to have telephone contact with her mother despite the previously-entered 'no contact' order between the juveniles and their mother. The respondent father's

explanation of a then-nineteen-month-old [Rhonda] accidentally dialing the respondent mother during a visit was not credible. During another visit in September/October 2016, the respondent father fed [Rhonda] strawberries during a visit, after which she became ill, despite the respondent father advising YFS in July 2016 that [Rhonda] was allergic to strawberries. He failed to meet her basic needs.

18. By the time that this Court conducted the Permanency Planning Hearing (PPH) on January 25, 2017, the respondent father had again disengaged from medication management and outpatient therapy and the mother continued to not participate in any services. . . .

19. The respondent father did complete an online parenting class in January 2017. He received no articulable benefit from this course which was intended to strengthen his capacity to protect his children from injury. He testified that, in essence, this course provided no meaningful guidance on how to parent.

20. With regard to respondent father's visitation, he generally attended his visits until January 24, 2017 when he stopped appearing altogether. At the same time that he stopped visiting with his children, he stopped engaging in therapy or medication management and took no further action to strengthen his parenting or his bond with his children.

21. As of the date of the TPR trial, the respondent father was relatively depressed, but his depression was not as it had been in Fall 2016. He believes that his current mental health status does not impair his ability to parent. This belief, however, demonstrates a lack of insight into what led to his 2015 and 2016 hospitalizations when he did not take his medication as prescribed or attend therapy as directed. He further believes that his only barrier to reunification is to obtain independent housing of his own. His belief is unfounded. Among other things, he has not

> demonstrated any awareness of 1) how his mental health/illness impacts on his parenting capacity; or 2) what specific strategies or parenting techniques that will be required in order to provide a safe and appropriate home. His lack of engagement in mental health services renders him incapable of providing adequate care. There is a high probability that his incapability will remain present for the foreseeable future.

Respondent-father purports to challenge several of these findings of fact as unsupported by the evidence. However, in his challenges to findings 16, 17, 18, 20, and 22, respondent-father either concedes that the findings are supported by the evidence or omits any argument to the contrary. Thus, these findings are binding on appeal.

Respondent-father does challenge the implicit statement in finding 21—that is, that respondent-father's belief "that his current mental health status does not impair his ability to parent" is false. While we agree that the trial court's finding tends to suggest respondent-father's belief on this point is false, we cannot conclude the finding is unsupported by the evidence. As found elsewhere in the order, respondent-father has twice been admitted or involuntarily committed for psychiatric evaluation since the birth of his older child, Rhonda. At some point after being admitted in August 2015, respondent-father stopped complying with the treatment recommendations resulting therefrom; he was later involuntarily committed and hospitalized for nine days. During that hospitalization, respondent-father expressed suicidal ideations.

Despite these facts, respondent-father had again stopped complying with his treatment recommendations by the 25 January 2017 permanency planning hearing. Clearly, respondent-father's potential suicide or involuntary commitment would impair his ability to parent; given his failure to comply with treatment recommendations, the risk of these events coming to fruition renders misguided respondent-father's belief that his mental health status does not impair his ability to parent. Thus, the trial court's finding to that effect is supported by the evidence.

Respondent-father next challenges the statement in finding 19 that he "testified that, in essence, [the online parenting] course provided no meaningful guidance on how to parent." We agree that this statement is unsupported by the evidence, as the record reflects respondent-father never testified that the course provided no meaningful guidance on how to parent. Moreover, respondent-father's testimony could not be fairly read to state that he believed that the course essentially provided no meaningful guidance. Thus, we disregard this portion of finding 19 in our analysis.

Respondent-father also seems to challenge the statement in finding 19 that "[h]e received no articulable benefit from this course which was intended to strengthen his capacity to protect his children from injury." This statement, however, is supported by respondent-father's own testimony. When asked at the hearing what he learned from the online parenting course, respondent-father replied:

> That there is no book that tells us how to be parents, that we are just learning based on how -- where we are or how we're supposed to treat our children and I think what I learned here is that we're supposed to keep our children healthy and we're supposed to do the things that are best for them but also recognize that as parents, we're not perfect and that we won't have it all right at the same time, but even though, we continue, continue to push forward past, knowing that we're not perfect.

Respondent-father did not demonstrate that his capacity to protect his children was strengthened as a result of the class when the only thing he could articulate learning was that parents are supposed to keep their children healthy and do the best for them, but should know that they, as parents, are not perfect. This statement in finding 19 is supported by the evidence.

Respondent-father next challenges the statement in finding 23 that "there is a high probability of the repetition of neglect." This statement is an ultimate finding of fact, which is "reached by processes of logical reasoning from the evidentiary facts" found by the trial court. *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (citation and quotation marks omitted). We conclude that this ultimate finding is supported by the trial court's other evidentiary findings.

After the juveniles were initially adjudicated neglected, respondent-father was ordered to enter into a case plan with YFS, which required him to address issues with parenting and mental health. However, by the 25 January 2017 permanency planning hearing, respondent-father had discontinued the medication management

and outpatient therapy related to his mental health issues despite having expressed suicidal ideations and having twice been admitted for psychiatric treatment. Further, while respondent-father took a parenting class, he did not demonstrate that he learned anything from the class. Respondent-father twice failed in his protective capacity over Rhonda: first, by allowing Rhonda to have phone contact with respondent-mother despite the existence of a no-contact order, and second, by giving Rhonda strawberries despite being aware that she was allergic to the fruit. Finally, prior to the 25 January 2017 permanency planning hearing, respondent-father stopped attending visitation or otherwise taking action to strengthen the parental bond. These findings support the trial court's ultimate finding that the juveniles would likely be neglected again if returned to respondent-father's care.

Based on its determination that the juveniles had previously been adjudicated neglected and that there was a likelihood of repetition of neglect, the trial court correctly adjudicated the existence of neglect as a ground to terminate respondent-father's parental rights. Given our determination that the trial court correctly adjudicated the existence of neglect, we need not review respondent-father's challenge to the trial court's adjudication of the existence of dependency. The trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges HUNTER, JR. and ZACHARY concur.

Report per Rule 30(e).