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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-270

Filed: 20 November 2018

Johnston County, Nos. 15 JT 142–43, 15 JT 208

IN THE MATTER OF: E.J.R., A.J.R., and D.F.R.

Appeal by respondent-father from orders entered 5 December 2017 by Judge Resson O. Faircloth in Johnston County District Court. Heard in the Court of Appeals 11 October 2018.

Holland & O’Conner, P.L.L.C., by Jennifer S. O’Connor, for petitioner-appellee Johnston County Department of Social Services.

Mercedes O. Chut for respondent-appellant father.

Marie H. Mobley for guardian ad litem.

BRYANT, Judge.

Where the trial court properly concluded grounds existed to terminate respondent’s parental rights based on his willful failure to pay a reasonable cost of the children’s care, we affirm the trial court’s orders.

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Respondent, the father of A.J.R. (“Adelia”), E.J.R. (“Ian”), and D.F.R (“Dalia”) (collectively, “the children”),¹ and the children’s mother have a history with Child Protective Services dating back to 2008. At the time the Johnston County Department of Social Services (“DSS”) took formal legal action regarding the family in August 2015, respondent and the mother were married and expecting their third child, Dalia.

On 28 August 2015, DSS filed juvenile petitions alleging that then four-year-old Adelia and two-year-old Ian were neglected and dependent juveniles. DSS alleged that it received a report on 14 July 2015 that respondent and the children’s mother were in jail due to “squatting” in a house. It was further reported that while the family stayed at a hotel, Adelia and Ian were discovered by hotel staff unsupervised at the pool while the mother was sleeping in the hotel room. On 21 July 2015, Adelia and Ian were placed in a kinship placement with the paternal grandmother. However, on 22 August 2015, the parents violated the safety agreement during a supervised visit at a McDonald’s by absconding with Adelia and Ian. The paternal grandmother called law enforcement and the after-hours social worker who had completed an unannounced home visit at a previous residence of the parents. The mother informed the social worker that Adelia and Ian were not home and were at the store with respondent. The mother refused to provide their location to law

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

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enforcement or the social worker. After eight hours of the parents refusing DSS access to Adelia and Ian, the parents agreed to return them to the paternal grandmother. The petition further alleged that the parents have a history of domestic violence and substance abuse. DSS obtained nonsecure custody of Adelia and Ian.

Due to the parents' conflict with the paternal grandmother, on 16 September 2015, the trial court ordered Adelia and Ian be placed with their paternal aunt and uncle. On 18 September 2015, respondent and the mother entered into an Out of Home Services Agreement to address issues of substance abuse, mental health, parenting, and stable housing and employment. Respondent agreed to complete a substance abuse assessment and follow all recommendations; submit to random drug screens; complete a psychological assessment and follow all recommendations; complete domestic violence education and demonstrate learned knowledge; complete parenting education and demonstrate learned skills; maintain stable and safe housing; maintain stable employment with sufficient income; comply with court orders; be appropriate during visitations; and maintain contact with DSS.

In early November 2015, the mother gave birth to Dalia but checked into a hospital under a different last name. The mother originally told DSS she was due in February 2016 and neither parent informed DSS of the child's birth. On 13 November 2015, DSS filed a juvenile petition alleging Dalia to be neglected and dependent. DSS alleged that it received a report that the mother had given birth to Dalia and that the

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mother tested positive for opiates at the child's birth. DSS further alleged that the parents had not resolved the issues which led to the older two children coming into DSS's custody. DSS obtained a nonsecure custody order for Dalia.

However, the mother had already been discharged from the hospital by the time DSS learned of Dalia's birth. In an effort to avoid DSS, the parents took the child to various placements across several counties and did not respond to any of DSS's phone calls. The family eventually was located at a residence in Johnston County, North Carolina but refused to come to the door, and law enforcement had to make a forced entry into the home to remove the child. Respondent was combative when law enforcement entered the home, and the mother was located in a closet of the residence under a pile of clothes, holding Dalia. DSS took Dalia into custody and placed her in a foster home.

The trial court held a hearing on all three petitions on 2 December 2015. On 18 February 2016, the trial court entered an order adjudicating all three children to be neglected and dependent juveniles. In a separate disposition order entered 14 April 2016, the trial court ordered the parents to cooperate with DSS and follow any and all recommendations. The court ordered a minimum of one hour of supervised visitation per week with a maximum of four hours per week.

In a permanency planning order entered 18 May 2016, the trial court set the primary permanent plan as reunification with a secondary permanent plan of custody

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with a relative. The court found that the parents were not making progress to resolve the protective issues, and they had only recently begun to address the identified risk issues despite DSS having been working with the family since August 2015. The parents did not have stable housing and employment and were not consistently on time to their visitation with the children. The court also found that the paternal aunt and uncle were no longer able to care for Adelia and Ian, and they were placed in a foster home.

Following a permanency planning hearing held 25 May and 8 June 2016, the trial court entered an order on 30 November 2016 ceasing reunification efforts with the parents and changing the primary permanent plan to custody/guardianship with a relative with a secondary permanent plan of adoption. The court found that neither parent was actively participating in their case plan services. The parents did not have stable employment and housing and were in the process of being evicted. The court further found that the parents refused random drug screens, were uncooperative with DSS, and “lack[ed] any acceptance of their role or responsibility in the children’s placement in foster care.”

In a subsequent permanency planning order entered 1 February 2017, the trial court changed the primary permanent plan to adoption with a secondary permanent plan of custody/guardianship with a relative, and terminated the parents’ visitation with the children. The court found that neither parent was cooperating with their

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case plan and that they were not making sufficient progress to resolve the issues that led to the children's placement. The court found that the parents did not have stable housing and had been evicted, did not have stable employment and failed to provide verification of their employment to DSS, and did not cooperate with their substance abuse treatment by refusing random drug screens and possessing drug paraphernalia. Respondent also had not completed parenting classes and had not followed the recommendations of his psychological evaluation. The court further found that "[t]he parents have repeatedly demonstrated, throughout the case, a history of lying and deception" and "have consistently been uncooperative with [DSS.]"

On 20 March 2017, DSS filed petitions to terminate respondent's parental rights to the children alleging the grounds of neglect, willfully failing to make reasonable progress to correct the conditions which led to the children's removal, and willfully failing to pay a reasonable cost of the children's care. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3) (2017). A hearing was held on the petitions on 20 September 2017. The parents were not present at the start of the hearing but arrived two hours later during DSS's presentation of evidence. The court continued the matter until 27 September 2017 to allow the mother time to confer with her attorney. Following the conclusion of the hearing on 27 September 2017, the trial court entered orders on 5

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December 2017 terminating respondent's parental rights to Adelia, Ian, and Dalia.² The court concluded all three alleged grounds existed to terminate respondent's parental rights and that termination of his parental rights was in the children's best interests. Respondent filed timely written notice of appeal from the trial court's orders on 22 December 2017.

North Carolina General Statutes, section 7B-1111 sets out the statutory grounds for terminating parental rights. A finding 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 standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law.” *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted). “If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court.” *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (citation omitted). We review the trial court's conclusions of law *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008).

Respondent argues the trial court erred in concluding that grounds existed to terminate his parental rights pursuant to General Statutes, section 7B-1111(a)(3)

² The order also terminated the parental rights of the children's mother, but she is not a party to this appeal.

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because the findings do not support the conclusion that respondent willfully failed to pay a reasonable portion of the cost of the juveniles' care.

Pursuant to General Statutes, section 7B-1111(a)(3), a parent's rights may be terminated when

[t]he juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3) (2017).

“A parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent's ability or means to pay.” *In re Clark*, 303 N.C. 592, 604, 281 S.E.2d 47, 55 (1981). “[N]onpayment constitutes a failure to pay a reasonable portion ‘if and only if respondent [is] able to pay some amount greater than zero.’” *In re Clark*, 151 N.C. App. 286, 289, 565 S.E.2d 245, 247 (2002) (*quoting In re Bradley*, 57 N.C. App. 475, 479, 291 S.E.2d 800, 802 (1982)).

The trial court entered three identical orders terminating respondent's parental rights, one for each child. In support of its conclusions that respondent willfully failed to pay a reasonable cost of the juveniles' care, the trial court made the following finding of fact in each order:

36. Both parents were under child support obligations but

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failed to pay the same. The father was ordered to pay \$112.00 per month The monthly board rates for the juveniles are \$475.00 for [Ian] and [Dalia] and \$581.00 for [Adelia]. Both parents have reported sporadic employment throughout the case; however, they have failed to pay their child support obligations, which has resulted in an arrears balance for both, or provide any financial support to [DSS] for the benefit of the minor children. The parents have further not provided gifts, cards or provisions for the children in the last year. The parents had the ability to pay a sum greater than zero during the relevant time period.

Respondent challenges this finding in each order to the extent that it finds he had the ability to pay a sum greater than zero for the children's care. Respondent argues that he was incarcerated for "roughly three out of the relevant six months[.]" and the record contains no evidence that he earned any money in jail or had any fund with which to make a financial contribution toward the children's cost of care. Respondent argues the trial court must make specific findings about the parent's ability to pay throughout the relevant six-month time frame.

However, if an order of child support has been entered against a parent and is in effect at the time of the six-month period, it is not necessary for the petitioner to prove, and for the court to find, that the parent has the ability to pay child support because that determination has already been made in the child support order. *See In re S.T.B.*, 235 N.C. App. 290, 296–97, 761 S.E.2d 734, 738 (2014); *In re Becker*, 111 N.C. App. 85, 94, 431 S.E.2d 820, 826 (1993) ("Since the father entered into a voluntary support agreement to pay \$150.00 per month, DSS did not need to provide

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detailed evidence of his ability to pay during the relevant time period.”); *In re Roberson*, 97 N.C. App. 277, 281, 387 S.E.2d 668, 670 (1990) (“[T]here is no requirement that petitioner independently prove or that the termination order find as fact respondent’s ability to pay support during the relevant statutory time period.”).

The evidence and unchallenged findings of fact show that a child support order was entered on 15 April 2016, and was still in effect at the time the petition to terminate respondent’s parental rights was filed on 20 March 2017. In the child support order, the court found that respondent “ha[d] intentionally suppressed his income and [was] able bodied and capable of gainful employment.” Thus, the issue of respondent’s ability to pay is addressed and resolved by the fact that he was subject to a child support order that required him to pay \$112.00 per month for the benefit of his children. *S.T.B.*, 235 N.C. App. at 296–97, 761 S.E.2d at 738. Respondent failed to pay that amount, instead only making two payments during the case, and only one payment during the relevant six-month period on 3 October 2016. Though respondent was incarcerated from 16 January to 25 March 2017, a period of two months and four days during the relevant six-month period, respondent did not move to amend the child support order. Further, the record indicates that thirty days of his incarceration was due to his failure to pay child support.

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Because the child support order demonstrates that respondent had the ability to pay a reasonable portion of the children's care and he failed to pay that amount, the trial court did not err in concluding that respondent's parental rights were subject to termination on the ground that he willfully failed to pay a reasonable portion of the children's cost of care. *See In re A.L.*, 245 N.C. App. 55, 63, 781 S.E.2d 856, 862 (2016) (affirming termination under N.C. Gen. Stat. § 7B-1111(a)(3) where "[d]espite being subject to a child support order, [the] Respondent-father made only two payments over the course of this case, and only one during the relevant time period"). Since we have concluded termination on this ground was proper, we need not consider respondent's arguments regarding the remaining two grounds found by the trial court. *Id.* at 61, 781 S.E.2d at 860 ("If we determine that the findings of fact support one ground for termination, we need not review the other challenged grounds.").³

We affirm the trial court's orders terminating respondent's parental rights to the three children.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).

³ Respondent challenges many of the trial court's findings of fact leading to the termination of his parental rights based on neglect and based on failure to make reasonable progress. While we do not specifically address respondent-father's challenge and arguments in this regard, our review of the record is such that we would affirm the trial court's order terminating respondent-father's parental rights based on each of these two additional grounds.