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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-40

Filed: 21 August 2018

Cumberland County, No. 14 JT 128

IN THE MATTER OF: I.A.B.

Appeal by respondent-father from order entered 12 September 2017 by Judge Tiffany M. Whitfield in Cumberland County District Court. Heard in the Court of Appeals 26 July 2018.

*Elizabeth Kennedy-Gurnee for petitioner-appellee Cumberland County Department of Social Services.*

*David A. Perez for respondent-appellant father.*

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

ELMORE, Judge.

Respondent-father appeals from an order terminating his parental rights to his minor child, I.A.B. (“Ian”).<sup>1</sup> Ian’s mother did not appeal from the trial court’s order and is not a party to this appeal. For the reasons stated herein, we affirm.

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<sup>1</sup> A pseudonym has been used throughout this opinion to protect the juvenile’s privacy and for ease of reading.

**I.**

On 27 March 2014, Cumberland County Department of Social Services (“DSS”) filed a juvenile petition alleging Ian to be a neglected and dependent juvenile. The petition alleged that Ian’s mother had a long history of substance abuse, unemployment, unstable housing, and failure to provide care and supervision for her older children. Ian was born prematurely in March 2014. Shortly after Ian’s birth, both Ian and his mother tested positive for cocaine. Ian’s mother admitted to using cocaine off and on during the past year and to using cocaine three months before Ian’s birth. Respondent-father had not acknowledged paternity. DSS obtained nonsecure custody of Ian and placed him in foster care.

The juvenile petition came on for adjudication and disposition on 28 April 2014. DSS voluntarily dismissed the allegations of neglect. The parties, including respondent-father, stipulated to findings that Ian’s mother had a long history of substance abuse, that Ian and his mother tested positive for cocaine shortly after his birth, and that respondent-father had not acknowledged paternity. In an order entered 2 July 2014, the trial court adjudicated Ian to be a dependent juvenile pursuant to N.C. Gen. Stat. § 7B-101(9) and continued legal custody with DSS. Respondent-father was ordered to submit to random drug screenings and was allowed a minimum of two hours of weekly supervised visitation with Ian.

*Opinion of the Court*

At the 2 March 2015 initial permanency planning hearing, the trial court found that respondent-father's paternity had been established. Ian's mother continued to have unstable housing and moved from place to place, including respondent-father's residence. Respondent-father and Ian's mother had an "on again, off again" relationship, and an act of domestic violence had occurred between them. Social workers also had problems with both parents coming in for drug screenings. The trial court set a permanent plan of reunification, concurrent with custody with relatives or other caretakers, and concurrent with adoption. Respondent-father was ordered to enroll in and successfully complete domestic violence counseling, complete parenting classes, and engage in couples' counseling.

At a subsequent permanency planning hearing held on 27 July 2015, the trial court found that respondent-father continued to struggle with domestic violence and substance abuse. He tested positive for cocaine on 1 July 2015. Additionally, Ian's mother had been arrested following a domestic violence incident with respondent-father. As a result, the trial court found that the parents continued to create an environment injurious to Ian's welfare. It changed the permanent plan for Ian to adoption, concurrent with custody with other caretakers, and relieved DSS of further reunification and visitation efforts.

On 31 December 2015, DSS filed a petition to terminate respondent-father's parental rights on the grounds of neglect, willful failure to make reasonable progress,

willful failure to pay a reasonable portion of the cost of care, failure to legitimate, and dependency. Pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1)–(3) and (5)–(6).

Throughout 2016, the case was continued for various reasons, including difficulty serving Ian’s mother with court documents. At a 31 January 2017 permanency planning hearing, the trial court found that respondent-father had received certificates for anger management, domestic violence, and substance abuse programs in 2015 and 2016. However, respondent-father had maintained minimal contact with DSS since the last hearing, had multiple pending criminal charges, and had missed drug screenings. Respondent-father also informed the trial court that he expected Ian’s mother to continue residing with respondent-father following her release from incarceration.

Following a 27 March 2017 hearing on the petition, the trial court terminated respondent-father’s parental rights on the following grounds: (1) respondent-father had neglected Ian, (2) respondent-father had willfully left Ian in the care of DSS for more than 12 months without showing that reasonable progress had been made to correct the conditions that led to Ian’s removal, and (3) respondent-father was incapable of providing for the proper care and supervision of Ian, such that he was a dependent juvenile. The trial court concluded that it was in Ian’s best interest to terminate both parents’ parental rights pursuant to N.C. Gen. Stat. § 7B-1110(a). Respondent-father appeals.

**II.**

On appeal, respondent-father challenges the trial court's conclusion that grounds existed to terminate his parental rights. Respondent-father specifically argues that the trial court erred in terminating his parental rights to Ian on the basis of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). We disagree.

“This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the findings of fact support the court's conclusions of law.” *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015), *disc. review denied*, 369 N.C. 182, 793 S.E.2d 695 (2016). “If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (citation and quotation marks omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). Unchallenged findings of fact “are conclusive on appeal and binding on this Court.” *Id.* at 532, 679 S.E.2d at 909. “The trial court's conclusions of law are reviewable *de novo* on appeal.” *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and quotation marks omitted).

N.C. Gen. Stat. § 7B-1111(a)(1) permits a trial court to terminate parental rights based upon a finding that “[t]he parent has . . . neglected the juvenile” within

*Opinion of the Court*

the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-101(15) defines a “neglected juvenile” as

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile’s welfare . . . .

N.C. Gen. Stat. § 7B-101(15) (2017). “A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding.” *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). However, where “the parent has been separated from the child for an extended period of time, the petitioner must show that the parent has neglected the child in the past and that the parent is likely to neglect the child in the future.” *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 729 (2007).

In support of its conclusion that respondent-father neglected Ian, the trial court found as follows:

20. The juvenile was adjudicated dependent pursuant to N.C. Gen. Stat. § 7B-101(9) by order of this Court . . . based on a stipulation by the Respondents that they were unable to provide proper care or supervision for the juvenile due to the Respondent Mother’s substance abuse issues and the lack of an appropriate alternative child care arrangement.

. . . .

22. That although a finding of dependency was made in the underlying case, this Court finds that the juvenile was

*Opinion of the Court*

neglected in that he did not receive proper care and supervision from the Respondents. Additionally, the Respondents' failure to work their case plans and alleviate the conditions which led to the removal of the juvenile from the home constitutes neglect.

23. That the Court ordered the Respondent Mother and the Respondent Father to complete various services and programs as part of the Dispositional hearing on April 29, 2014, and subsequent permanency planning hearings in an effort to reunify the juvenile with the Respondents. . . . Those Orders included that the Respondent Father was to:

- m. Submit to random drug screens through [DSS] or other appropriate screening facility;
- n. Enroll in, actively engage in, and successfully complete domestic violence counseling;
- o. Enroll in, actively engage in, and successfully complete Smart Start Parenting Classes; and
- p. Enroll in, actively engage in, and successfully complete couples' counseling.

24. To date, neither the Respondent Mother nor the Respondent Father have substantially complied with the orders of the Court or the recommendations of [DSS] despite the Social Worker's numerous attempts of assisting the Respondents with scheduling appointments and making referrals. Additionally, the Respondent Mother and the Respondent Father were afforded the resources and opportunities to complete the Court ordered and Department recommended activities. The Respondent Mother and the Respondent Father did not follow through.

. . . .

33. . . . . The Respondent Father has not been able to commit to living a lifestyle conducive to appropriate rearing of the juvenile.

34. The Respondent Mother and the Respondent Father

*Opinion of the Court*

have an on-again and off-again relationship that is unstable and is filled with domestic violence. . . .

35. The Respondent Mother and the Respondent Father have failed to engage in couples counseling. They have not address[ed] their substance abuse issues, and they have not engaged in domestic violence counseling.

36. The Respondent Father has failed to complete Smart Start Parenting Classes. He did enroll in the same; however, he was unsuccessfully discharged due to non-compliance. Additionally, the Respondent Father has not engaged in or completed couples counseling. He did complete the *Impact of Domestic Violence on Children Workshop*; however, he continued to engage in acts of domestic violence with the Respondent Mother following the completion of the class.

37. The Respondent Father has substance abuse issues that are of long standing and enduring nature. He had yet to adequately address this issue. He did complete a substance abuse assessment in 2015; however, he has continued to use illegal substances. He tested positive for cocaine in February 2017.

38. The Respondents' failure to address the issues that led to the removal of the juvenile from their care rendered them incapable of providing proper care and supervision of the juvenile and constitutes neglect. That neglect of the juvenile by the Respondents is highly likely to continue into the foreseeable future inasmuch as neither the Respondent Mother nor the Respondent Father have addressed their substance abuse issues, and the Respondent Mother continues to not have stable housing.

. . . .

40. There has not been any substantial change in circumstances since the Court entered the order changing the permanent plan to adoption. In fact, there has not been

*Opinion of the Court*

any substantial change since the filing of the Petition in this matter or the underlying matter.

41. That neither of the Respondents have alleviated the conditions which led to the removal of the juvenile from the home.

42. That failure of the Respondents to adequately and timely address the issues that led to the removal of the juvenile from the home constitutes neglect. That failure to adequately and timely address their neglectful behaviors renders the Respondent Mother and the Respondent Father incapable of providing adequate care and supervision of the juvenile. That the probability that the neglect will be repeated and said incapability will continue in the future is high given the failure of the Respondent Mother and the Respondent Father to address and alleviate the issues.

43. The Court did allow the Respondents to have visitation. In fact, in August 2014, the Court allowed the Respondent Father to have unsupervised visitation with the juvenile . . . ; however, those visits were ceased and moved to supervised at [DSS] due to a domestic violence altercation between the Respondent Mother and the Respondent Father.

44. That on occasions during the supervised visitation, the Respondent Father did not conduct himself appropriately during the visits. He struggled to communicate with the juvenile, and he was often times observed to be making inappropriate comments to the juvenile about the juvenile's placement, the Agency, the Court, or whomever the Respondent Father was upset with at the time.

45. During the Respondent Father's two-hour visits with the juvenile, he did not change the juvenile's diaper or check it. On occasion, the Respondent Father would not give the juvenile his entire lunch that had been prepared for the juvenile by his foster parents as the Respondent

*Opinion of the Court*

Father did not trust the items the placement provider put in the lunch; the Respondent Father would not provide any other food for the juvenile himself. Additionally, the Respondent Father would eat in front of the juvenile, and when the juvenile would reach out for food, the Respondent Father would deny him the food.

....

54. Throughout the pendency of this action, each of the Respondents has willfully failed to make reasonable or substantial progress towards alleviating the conditions which led to the removal of the juvenile from the home despite the assistance of [DSS]. Their lifestyle is not suitable for child rearing. It is highly likely that the Respondents' pattern of an unstable lifestyle and substance abuse will continue into the foreseeable future.

55. That each of the Respondents has withheld their love and care from the juvenile; they have willfully failed to take advantage of the opportunity to display filial affection in that they have not contacted the juvenile by sending cards, letters or gifts; by making telephone contact; by alleviating the conditions which led to removal; or by otherwise showing their love and care for the juvenile. ....

....

57. The Respondents have evinced willful and intentional conduct demonstrating a settled purpose to forego all parental duties and relinquish all parental claims to the juvenile.

58. The Respondents have demonstrated a settled pattern of neglect and abandonment to the juvenile, and this pattern is likely to continue into the foreseeable future. The Court finds there is a reasonable probability that is a near certainty that such neglect would be continued and repeated if the juvenile was to be returned to the care, custody, or control of either of the Respondents.

*Opinion of the Court*

59. That both of the Respondents has [sic] acted in a manner inconsistent with their constitutionally protected status as parents. They have failed to provide any care or support for the juvenile.

60. That the Respondents have demonstrated a pattern of failing to provide appropriate care for the juvenile, and it is highly probable that the neglect would be repeated if custody of the juvenile was returned to either of the Respondents.

61. Neither of the Respondents are fit or proper persons for the care, custody and control of the juvenile.

Respondent-father challenges several of the trial court's findings of fact as not being supported by the evidence. After careful review, we conclude that the challenged findings either have adequate support in the record or that the error does not invalidate the adjudication of neglect. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (holding that even if some findings of fact are not supported by evidence in the record, "[w]hen . . . ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error").

**III.**

Respondent-father first contends that finding of fact 24 and the last sentence of finding of fact 33 are erroneous because he had substantially complied with the court's orders. Respondent-father relies on the testimony of a DSS social worker for his argument. The social worker testified that respondent-father had completed

*Opinion of the Court*

substance abuse treatment, domestic violence classes, and anger management classes—“the majority of the services” offered to him. However, she later testified that respondent-father had not learned from these services. It is also undisputed that the trial court ordered respondent-father to submit to random drug screenings and to successfully complete domestic violence counseling, parenting classes, and couples’ counseling. Through his own testimony, respondent-father admitted that he had missed two drug screenings, tested positive for cocaine twice, failed to complete parenting classes, and failed to engage in couples’ counseling. Although he completed a domestic violence class in May 2015, he and Ian’s mother engaged in domestic violence after completion of the class. Based on the foregoing, clear and convincing evidence supports the trial court’s finding that respondent-father had not substantially complied with its orders.

Respondent-father next challenges finding of fact 34, asserting that there was no competent evidence showing that he and Ian’s mother had an “*ongoing* relationship” at the time of the termination hearing, much less one that was filled with domestic violence. However, the trial court did not find an ongoing relationship, but rather that the parents had an “on-again off-again relationship[.]” The trial court’s prior orders demonstrate that respondent-father and Ian’s mother had an unstable, volatile relationship and that it included incidents of domestic violence. Furthermore, at the termination hearing, respondent-father testified that

“sometimes, we’re a couple, sometimes we weren’t. . . . we broke up several times[.]”

Thus, the trial court’s finding of fact 34 is supported by the evidence.

As to finding of fact 35, respondent-father first contends that he did not engage in couples’ counseling because he was not with Ian’s mother when he attempted to engage in counseling. Respondent-father’s argument disregards the fact that the parents could have completed couples’ counseling during the times they were together. He also argues that the trial court erred in finding that respondent-father had not addressed his substance abuse issues and had not engaged in domestic violence counseling. While there was evidence that he completed substance abuse treatment in 2015 and 2016, respondent-father tested positive for cocaine as recently as February 2017. Thus, the trial court reasonably inferred that respondent-father had not resolved his substance abuse issues. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) (“The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject.”). The trial court’s finding that respondent-father had not engaged in domestic violence counseling, however, is not supported by the evidence, as it appears from the record that respondent-father completed a domestic violence class in May 2015.

*Opinion of the Court*

With regard to finding of fact 36, respondent-father admits that he did not complete parenting classes, but contends that “this was beyond his control” because he was first required to complete drug treatment and visitation. Respondent-father argues that because his visitation was eventually terminated by the trial court, it was impossible for him to complete the parenting class. Respondent-father’s argument ignores the fact that his visitation was changed from unsupervised to supervised because of a domestic violence altercation between the parents and was ultimately terminated based on his inappropriate behavior during visitation. Respondent-father also maintains his argument that he could not complete couples’ counseling because he was not with Ian’s mother at the time he tried to engage in couples’ counseling. Again, we reject his argument.

Respondent-father also challenges finding of fact 37, contending that because he had been sober for more than one year by the date of the termination hearing and had only tested positive for drugs twice over a span of three years, the trial court’s finding that he had not adequately addressed his substance abuse issues and that his substance abuse issues were longstanding was erroneous. This argument is without merit. Respondent-father’s own testimony at the hearing established that he tested positive for cocaine in February 2017—one month before the termination hearing. Moreover, respondent-father’s issues with substance abuse were noted as far back as the 2 July 2014 adjudication and disposition order.

In challenging findings of fact 38, 40, 41, 42, and 49, respondent-father asserts that he addressed the issues that led to the removal of Ian by establishing paternity, ceasing his relationship with Ian's mother, and by addressing his substance abuse issues. Although respondent-father established his paternity, as recently as the 31 January 2017 permanency planning hearing, the trial court found that respondent-father and Ian's mother were "openly re-united." Additionally and as previously discussed, respondent-father's positive drug test in February 2017 demonstrates that his substance abuse issues had not been resolved by the time of the termination hearing.

Respondent-father next argues that finding of fact 54 is erroneous because at the time of the termination hearing, he had a stable lifestyle and income, "including sobriety and no evidence of continuing domestic violence problems." However, there is clear and convincing evidence that respondent-father continued to have substance abuse issues and that a domestic violence incident occurred after the completion of that class, indicating that this issue was not resolved. Moreover, the DSS social worker testified that respondent-father failed to demonstrate any progress on the parts of his case plan that he had completed. Based on the foregoing, we conclude the trial court did not err by finding that respondent-father had an unstable lifestyle and failed to make substantial progress on his case plan.

As to finding of fact 55, respondent-father contends that because his visitation with Ian was “unilaterally terminated” on 27 July 2015, any lack of contact after this date cannot be held against him. This argument ignores the unchallenged findings of fact indicating that respondent-father’s visitation was terminated due to his engaging in domestic violence with Ian’s mother and behaving inappropriately during visitation.

Respondent-father also attempts to challenge finding of fact 57 but states merely that the finding is erroneous without providing any support for his assertion. Accordingly, we deem this argument to be abandoned on appeal. N.C. R. App. P. 28(b)(6).

Respondent-father argues that the portion of finding of fact 59 which states that he failed to provide any care or support for Ian is erroneous, and we agree. The record evidence demonstrates that respondent-father paid child support for Ian until his child support obligation was suspended.

Next, respondent-father challenges findings of fact 58, 60, and 61 as well as conclusions of law 2 and 3, in which the trial court concluded that Ian was a neglected juvenile, that there was a reasonable probability of repeated neglect if Ian were returned to respondent-father’s care, and that grounds existed to terminate respondent-father’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Respondent-father contends that these findings are not supported by the evidence and that the conclusions are not supported by sufficient findings of fact. We disagree.

In finding of fact 22, the trial court found that Ian was previously neglected in that he did not receive proper care and supervision from respondent-father. Because respondent-father has not challenged this finding on appeal, it is binding on this Court. Thus, the only issue before us is whether the trial court erred in concluding that there was a probability of a repetition of neglect. *See In re C.W.*, 182 N.C. App. at 220, 641 S.E.2d at 729.

The trial court's findings—supported by clear and convincing evidence—demonstrate that there was a probability of a repetition of neglect if Ian were returned to the care of respondent-father. *See In re C.M.P.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 803 S.E.2d 853, 859 (2017) (stating that “[a] parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect”). Respondent-father not only failed to resolve his substance abuse and domestic violence issues, but also failed to engage in and complete parenting classes and couples’ counseling. He was unable to separate himself from the volatile relationship with Ian’s mother. Accordingly, we hold that the trial court did not err in terminating respondent-father’s parental rights on the ground of neglect.

**IV.**

IN RE: I.A.B.

*Opinion of the Court*

Having determined that the trial court's termination of respondent-father's parental rights based on neglect was fully supported by the record, we need not address respondent-father's arguments regarding the remaining grounds found by the trial court. *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.G.S. 7B-1111 is sufficient to support a termination."). Accordingly, the order of the trial court terminating respondent-father's parental rights is hereby:

AFFIRMED.

Judges DAVIS and ZACHARY concur.

Report per Rule 30(e).