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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-880

Filed: 1 October 2019

Guilford County, Nos. 15 JT 185, 363

IN THE MATTER OF: J.D.H. & J.D.A.

Appeal by Respondent-father from order entered 22 May 2018 by Judge Tonia A. Cutchin in Guilford County District Court. Heard in the Court of Appeals 5 September 2019.

Mercedes O. Chut for Petitioner-appellee Guilford County Department of Health and Human Services.

Sean P. Vitrano for Respondent-appellant father.

Marie H. Mobley for guardian ad litem.

McGEE, Chief Judge.

Respondent, the father of J.D.H. and J.D.A., appeals from the trial court's order terminating his parental rights.¹ We affirm.

The Guilford County Department of Health and Human Services ("DHHS") filed a petition alleging that J.D.H. was a neglected and dependent juvenile on 6 April

¹ The children's mother relinquished her parental rights and is not a party to this appeal.

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2015. DHHS had received a Child Protective Services (“CPS”) report two days earlier, which claimed that Respondent had left six-month-old J.D.H. on the front porch of her maternal aunt’s home. Her mother was hospitalized at the time, due to mental health issues. The mother had previously obtained a domestic violence protective order (“DVPO”) against Respondent, which also forbade him from having contact with J.D.H. The maternal aunt reported to law enforcement that Respondent had threatened her repeatedly. Respondent was arrested and charged with criminal child neglect and violation of a DVPO. DHHS took nonsecure custody of J.D.H. and placed her with a maternal cousin and her spouse on 5 June 2015.

Respondent entered into a case plan with DHHS. He agreed to address his issues with domestic violence, substance abuse, and parenting skills and to obtain consistent housing and employment. Respondent was permitted supervised visitation with J.D.H. twice per week. However, on 3 October 2015, he was arrested for violation of a DVPO and stalking, and he remained in pre-trial incarceration until he posted a bond on 18 February 2016.

DHHS filed a petition on 12 October 2015 alleging that J.D.A., born in October of 2015, was neglected and dependent. DHHS had received a CPS report that J.D.A. had tested positive for marijuana. The petition also noted that her mother was struggling with mental health issues and had a history of domestic violence with Respondent. DHHS took nonsecure custody of J.D.A. At the time the petition was

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filed, her father was unknown. Subsequent DNA testing revealed that Respondent was J.D.A.'s father.

The trial court entered orders adjudicating J.D.H. and J.D.A. as neglected and dependent juveniles on 14 January 2016. Respondent was ordered to comply with his case plan, which had been modified in light of his incarceration. The trial court entered an order establishing the primary permanent plan as reunification, with a secondary plan of adoption on 3 April 2016.

The trial court entered a permanency planning order which changed the primary plan to adoption on 7 November 2016. The court found that Respondent had been incarcerated again in April 2016 and that he was not making adequate progress on his case plan. DHHS was ordered to file a termination petition against Respondent within 60 days.

DHHS filed a petition to terminate Respondent's parental rights on the grounds of neglect, willful failure to make reasonable progress, willful failure to pay a reasonable portion of the children's cost of care, failure to legitimate, dependency, and willful abandonment on 30 November 2016. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1)-(3), (5)-(7) (2017). The petition was heard on 27 and 28 March 2018. The trial court entered an order terminating Respondent's parental rights as to J.D.H. and J.D.A. on all six grounds alleged by DHHS on 22 May 2018. Respondent appeals.

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Respondent argues that the trial court erred when it concluded that grounds existed to terminate his parental rights. We disagree.

“The standard for 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.” *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). “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) (internal quotation marks and citations omitted), *appeal dismissed*, 362 N.C. 235, 659 S.E.2d 433 (2008).

Under N.C. Gen. Stat. § 7B-1111(a)(1), “[t]he trial court may terminate the parental rights to a child upon a finding that the parent has neglected the child.” *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003). A neglected juvenile is defined, in relevant part, 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[.]” N.C. Gen. Stat. § 7B-101(15) (2017).

Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.

In re D.L.W., 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (citation omitted).

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In the present case, Respondent was separated from both daughters for a significant period by the time of the termination hearing. There is no dispute that the girls had previously been adjudicated neglected. However, Respondent argues that J.D.A.'s adjudication should not be admissible against him, because it was based solely on the actions of her mother; he never personally neglected her. Our Supreme Court has held that a prior neglect adjudication under similar circumstances was "appropriately considered" by the trial court "as relevant evidence" during the termination hearing of the respondent-father, who was incarcerated at the time of the adjudication. *In re M.A.W.*, 370 N.C. 149, 153, 804 S.E.2d 513, 515-17 (2017). Likewise, the trial court "appropriately considered the prior adjudication of neglect" of J.D.A. at Respondent's termination hearing. *Id.* at 153, 804 S.E.2d at 517.

The trial court's termination order includes many unchallenged findings of fact showing that Respondent made only limited progress in completing his case plan and that his progress was significantly impeded by his continuous cycle of incarceration. For instance, Respondent was referred to a domestic violence intervention program ("DVIP") twice, because he could not follow through with the first referral due to his incarceration. After the second referral, Respondent attended seven DVIP classes, but was unable to complete the program.

Respondent's incarceration was due to convictions for felony breaking and entering, injury to personal property, driving while impaired, misdemeanor larceny,

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harassing phone calls, communicating threats, assault with a deadly weapon, cyber stalking, and violation of a DVPO. On 1 June 2017, Respondent was arrested for assault on a female, attempted kidnapping, assault with a deadly weapon with intent to kill, possession of a firearm by a felon, and attempted first degree murder. At the time of the termination hearing, those charges were still pending, and Respondent was in pretrial detention. Thus, during the approximately 36 months that J.D.H. was in DHHS custody and 29 months that J.D.A. was in DHHS custody, Respondent accrued numerous criminal convictions and charges, the majority of which were for violent offenses.

The trial court also made detailed findings about the results of Respondent's parenting exam, which Respondent did not complete until after the termination petition had been filed. The exam revealed that Respondent was "not experienced in providing child care. He was defensive within the evaluation process and tended to deny or minimize problematic behavior." In addition, Respondent "did not exhibit much understanding or appreciation of the sacrifices that he would now need to make in order to provide the quality, safety, and continuity of care that his children need." Respondent also denied that he had problems with domestic violence. Ultimately, the examiner concluded that Respondent was not "currently prepared to provide responsible care for his daughters." There was no evidence that Respondent's

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parenting ability had improved between the time of his parenting evaluation and the time of the termination hearing.

Finally, the trial court found that, during the six months prior to the filing of the termination petition, Respondent

failed to send the juveniles any cards, gifts, or other tokens of acknowledgment. He sent no birthday cards, nothing to the juveniles to acknowledge any holiday, Valentine's day, or for any other reason. He failed to provide any financial support for the juveniles at any point during the entire period the juveniles have been in the custody of the department.

While Respondent attempted to explain away this behavior, he concedes the court's finding is accurate.

The above unchallenged findings² provide ample support for the trial court's determination that the children had previously been neglected and that neglect would be repeated if they were returned to Respondent's care. While the children remained in DHHS custody, Respondent continued to engage in violent, criminal behavior, failed to take the steps necessary to become an adequate parent, and failed to show any love or affection to the children for a significant period. Accordingly, although these findings could also support termination under a different statutory ground, we

² While Respondent challenges other findings of fact that could be relevant to this ground, we do not address those challenges because these findings, standing alone, support the trial court's conclusion. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When, however, ample other findings of fact support an adjudication . . . , erroneous findings unnecessary to the determination do not constitute reversible error.").

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hold the trial court correctly concluded that Respondent's rights could be terminated based on neglect. *See In re Bradshaw*, 160 N.C. App. 677, 682, 587 S.E.2d 83, 86 (2003) (affirming an order terminating parental rights based upon neglect where the trial court found that the incarcerated respondent "neither provided support for the minor child nor sought any personal contact with or attempted to convey love and affection for the minor child"); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 909 (2001) (affirming an order terminating parental rights based upon neglect and noting that the incarcerated respondent's history of lawlessness and repeated incarcerations supported termination).

Since termination on this ground was proper, we need not address Respondent's arguments regarding the other grounds for termination found by the trial court. *See In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006) ("A single ground under North Carolina General Statutes § 7B-1111 is sufficient to support an order terminating parental rights."). The termination order is affirmed.

AFFIRMED.

Judge COLLINS concurs.

Judge MURPHY concurs in result only by separate opinion.

Report per Rule 30(e).

No. COA 18-880– *In re: J.D.H. & J.D.A.*

MURPHY, Judge, concurring in result only.

I concur with the Majority’s result, but would affirm the trial court’s order on a different ground and not reach the ground addressed by the Majority.

Any valid ground is independently sufficient to support an order terminating one’s parental rights. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). Here, the trial court correctly concluded that a valid ground existed to terminate Respondent’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(3). It is apparent from the record and unchallenged findings of fact that Respondent had “willfully failed . . . 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). Respondent’s willful failure to provide anything in support is an independent and sufficient ground to terminate his parental rights. N.C. Gen. Stat. § 7B-1111(a)(3); *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. I would affirm the trial court’s order pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) and respectfully concur in result only.

IN RE: S.H.-K.J.L. & W.L.L.

MURPHY, J., concurring