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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-757

No. COA22-127

Filed 15 November 2022

Haywood County, Nos. 20 JA 27, 20 JT 27

IN THE MATTER OF: N.G.L.

Appeal by respondent-father from orders entered 19 November 2021 by Judge Donna F. Forga in Haywood County District Court. Heard in the Court of Appeals 24 October 2022.

Rachael J. Hawes for petitioner-appellee Haywood County Health and Human Services Agency.

William L. Esser, IV, for guardian ad litem.

J. Thomas Diepenbrock for respondent-appellant father.

PER CURIAM.

¶ 1 Respondent-father appeals the trial court's orders terminating his parental rights to his minor child N.G.L. ("Noe")¹. Because we hold the trial court did not err in terminating respondent's parental rights on the ground of dependency pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), we affirm the court's orders.

I. Factual Background

¹ A pseudonym is used to protect the juvenile's identity and for ease of reading.

¶ 2 Respondent and Noe’s mother have an extensive history with the Haywood County Health and Human Services Agency (“HHSA”) due to substance abuse, domestic violence, and parenting issues.

¶ 3 On 8 October 2019, respondent was convicted of assault with a deadly weapon with intent to kill and received a multi-year prison sentence. Respondent’s projected release date is 25 September 2024.

¶ 4 On or about 15 November 2019, Noe’s mother left her at the home of family friends and disappeared without contact for nearly four months. HHSA visited Noe at the family friends’ home on 7 and 8 January 2020 and observed that the home was filthy and did not meet the minimum standards for a placement for Noe.

¶ 5 On 9 April 2020, HHSA obtained nonsecure custody of Noe and filed a juvenile petition alleging she was an abused, neglected, and dependent juvenile.

¶ 6 On 2 June 2020, the trial court adjudicated Noe neglected and dependent by consent order. In a separate disposition order entered the same day, the trial court set the permanent plan as reunification with a concurrent plan of guardianship with a relative or court approved caregiver.

¶ 7 Following a review hearing held 11 February 2021, the trial court entered an order on 1 March 2021 ceasing reunification efforts and changing the permanent plan to adoption with a secondary plan of guardianship. The court found respondent was still incarcerated, the parents were not making adequate progress on their case plans

within a reasonable period, and the conditions that led to Noe's removal continued to exist. The court ordered HHSA to file a petition for termination of the parents' parental rights within 60 days of entry of the order.

¶ 8 On 23 April 2021, HHSA filed its petition to terminate respondent's parental rights, alleging grounds existed based on neglect, willfully failing to make reasonable progress to correct the conditions that led to the child's removal from the home, dependency, and willful abandonment.² See N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6) and (7) (2021). Following a hearing, the trial court entered an adjudication order on 19 November 2021 finding that grounds existed to terminate respondent's parental rights based on neglect, willful failure to make reasonable progress, and dependency. See N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6). In a separate disposition order entered the same day, the trial court concluded that termination of respondent's parental rights was in Noe's best interests. Therefore, the court terminated respondent's parental rights. Respondent timely filed notice of appeal.³

II. Analysis

¶ 9 On appeal, respondent challenges the trial court's adjudication of grounds for

² The petition also moved to terminate the mother's parental rights; however, she has not appealed from the termination of her rights and is not a party to this appeal.

³ Respondent also appealed from the trial court's 1 March 2021 order ceasing reunification efforts between him and Noe. However, respondent has not raised any issues regarding this order in his brief, and therefore has abandoned any challenge to the order ceasing reunification efforts. See N.C.R. App. P. 28(b)(6).

termination of his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)–(2) and (6).

¶ 10 We review a trial court’s adjudication that grounds exist to terminate parental rights “to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citation omitted). “Moreover, we review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *Id.* at 407, 831 S.E.2d at 58–59. “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 11 Pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), a trial court may terminate parental rights if “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 the incapability will continue for the foreseeable future.” N.C. Gen. Stat. § 7B-1111(a)(6) (2021). “In order for dependency to provide a basis for terminating parental rights, the petitioners must also prove that ‘the parent lacks an appropriate alternative childcare arrangement.’” *In re A.L.L.*, 376 N.C. 99, 106, 852 S.E.2d 1, 6–7 (2020) (quoting N.C. Gen. Stat. § 7B-1111(a)(6)).

¶ 12 Respondent does not challenge the trial court's determination that his incarceration rendered him incapable of providing for Noe's proper care and supervision. He argues the trial court erred in concluding his parental rights were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(6) because HHSA failed to show he lacked an appropriate alternative childcare arrangement.

¶ 13 The trial court made the following pertinent findings of fact:

64. The Respondent Father pled guilty to Felony Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury on October 8, 2019 He is currently incarcerated . . . [with] a projected release date [of] October 31, 2025. The Respondent Father has had three (3) infractions since becoming incarcerated on October 25, 2019.

. . . .

66. The Respondent Parents lack an appropriate alternative child care arrangement.

67. The Respondent Father has only provided the name of [the paternal grandmother] as a placement option for [Noe]. [The paternal grandmother] has been repeatedly ruled out by the Court as a placement option for [Noe]. The Court takes judicial notice of the Orders entered in the JA file on June 2, 2020, August 19, 2020, and February 11, 2021, expressly excluding [the paternal grandmother] as a placement for [Noe]. The Court further takes judicial notice of the findings of fact at Adjudication related to [the paternal grandmother's] inadequate care of [Noe]. [The paternal grandmother] was either unwilling or unable to follow the protocols required for care of the minor child. No further evidence has been provided to the Court that [the paternal grandmother]'s circumstances have changed such that she would be safely considered a placement for the child.

....

74. The Court notes that on April 9, 2020, the Respondent Mother was missing, the Respondent Father was in prison for the next several years, the child had serious mental health needs, and the only possible caregiver produced was the Paternal Grandmother [], who was grossly incapable of seeing to the child's needs in a safe and appropriate manner. Eighteen (18) months later, on October 18, 2021, the Respondent Mother is missing, the Respondent [Father] is in prison for the next four (4) years, the child continues to have serious mental health needs, and the only caregiver offered by the Respondent Father in his stead is [the paternal grandmother]. The Respondent Parents have done nothing whatsoever throughout this case to alleviate the safety concerns for their daughter, or otherwise produce an appropriate alternative childcare arrangement for her.

The court also found that HHSA independently located thirteen individuals for possible placement, but none were approved as an appropriate placement, and HHSA attempted to contact fifteen other possible relatives, but none responded.

¶ 14 Respondent challenges the portions of findings of fact 24, 67, and 74 stating that the only placement option offered by respondent was the paternal grandmother and that respondent failed to provide an appropriate alternative childcare arrangement for Noe. Respondent argues “[t]hese statements are inaccurate and misleading” because he “had identified several individuals as possible placements, and it was [HHSA’s] burden to prove that these placements were not appropriate.” Respondent argues a family friend, Ms. S., expressed an interest in being a placement

option in November 2020; he previously identified an unnamed family friend “who could take Noe”; and he proposed his “good friend[,]” Ms. P., as a possible placement at the termination hearing. He contends HHSA failed to show these possible placements were not appropriate.

¶ 15 The Guardian ad Litem (“GAL”) argues respondent failed to challenge findings of fact 22 and 66, where the court also found that the parents lacked an appropriate alternative childcare arrangement, and therefore those findings are binding on appeal. *See In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). The GAL further argues that these unchallenged findings, in conjunction with respondent’s concession that he is incapable of providing Noe proper care and supervision, are sufficient to support the court’s conclusion that respondent’s parental rights were subject to termination based on dependency.

¶ 16 In his reply brief, respondent argues the GAL’s argument “overlooks” that his contention is that HHSA failed to prove by clear and convincing evidence that he lacked an appropriate alternative childcare arrangement and that he has challenged the same statements in findings of fact 24 and 74.

¶ 17 To the extent respondent has challenged the trial court’s findings that he did not provide any names other than his mother and that he lacked an appropriate alternative childcare arrangement, the evidence and other unchallenged findings support a determination that respondent’s proposed placements were not appropriate

and that he failed to provide an appropriate alternative childcare arrangement. Noe had been removed from the paternal grandmother's home, which the trial court had repeatedly deemed to be an inappropriate placement due to the paternal grandmother's unwillingness to cooperate with Noe's recommended treatment and medications. Further, the court found there was no evidence the paternal grandmother's circumstances had changed such that she would be considered a safe placement for Noe. As to Ms. S., HHSA's 25 January 2021 court report shows that while she did express an interest in being a placement in November 2020, the "close proximity" of her home to the paternal grandmother's prevented Ms. S. from going forward as a placement option. Regarding the unnamed family friend, a social worker testified at a prior hearing that respondent had mentioned "a possible friend who could take [Noe]," however she was only an acquaintance and was not considered by HHSA because Noe had never met her and had no relationship with her. As to Ms. P., respondent acknowledged at the termination hearing she was not a possible placement, testifying that he did not previously recommend Ms. P. because "[she] can't do it." Finally, a social worker testified that the only name she "really heard of" from respondent was the paternal grandmother and that respondent has not been able to provide an appropriate alternative childcare placement.

¶ 18 Additionally, Noe required advanced care due to her diagnoses of Post-Traumatic Stress Disorder, Oppositional Defiance Disorder, and ADHD. At the time

of the termination hearing, she was in a Level III placement with no plans to step down from that level of care. Respondent does not challenge the court's findings regarding Noe's level of care and mental health needs. Indeed, he acknowledged that Noe continued to need an advanced level of care, stating at the hearing that if his parental rights were not terminated, "[Noe] needs to stay in the group home it sounds like. She really needs some help." A social worker also acknowledged that Noe's mental health needs were an important consideration in assessing an appropriate placement, testifying that HHSA "has not been able to assess any family members that can handle [Noe] with her mental health needs and the structure that she needs in order to be successful in the future." Thus, although respondent may have offered alternative placement options, he failed to provide an "appropriate" alternative childcare arrangement for Noe given her mental health needs. *See In N.N.B.*, 271 N.C. App. 199, 203, 843 S.E.2d 474, 477 (2020) (concluding that, while the respondent's sister "may well be an 'appropriate' placement for a child who does not require" a particularly high level of care, the sister "[was] not an 'appropriate' placement for [the child] because of his psychiatric needs").

¶ 19 We hold the evidence and unchallenged findings support the trial court's determination that Noe is dependent because respondent is incapable of providing for her proper care and supervision due to his incarceration, and that respondent did not provide an appropriate alternative childcare arrangement. Thus, we conclude the

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Opinion of the Court

trial court did not err in adjudicating grounds to terminate respondent's parental rights based on dependency.

¶ 20 Because an adjudication of one ground is sufficient to support a termination of parental rights, we need not address respondent's challenges to the other grounds. *E.g., In re J.A.J.*, 2022-NCSC-85, ¶ 45, 874 S.E.2d 563, 574. Respondent has not challenged the trial court's conclusion that termination of his parental rights is in Noe's best interests. Therefore, we affirm the trial court's orders terminating respondent's parental rights to Noe.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ and HAMPSON.

Report per Rule 30(e).