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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1009

Filed 05 September 2023

Onslow County, No. 19 JT 19

IN THE MATTER OF: S.R.A.

Appeal by respondent-father from order entered 23 August 2022 by Judge James W. Bateman III in Onslow County District Court. Heard in the Court of Appeals 21 August 2023.

Richard Penley for petitioner-appellee Onslow County Department of Social Services.

Alston & Byrd, LLP, by Kelsey L. Kingsbery, for the guardian ad litem.

Hooks Law, P.C., by Laura G. Hooks, for respondent-appellant father.

RIGGS, Judge.

Respondent-father (“Father”) appeals from an order terminating his parental rights to his daughter, S.R.A. (“Sadie”).¹ After careful review, we affirm the trial court’s order.

I. FACTUAL AND PROCEDURAL HISTORY

¹ A pseudonym is used to protect the identity of the juvenile.

The record establishes that Sadie was born prematurely in January 2019. Soon thereafter, Onslow County Department of Social Services (“DSS”) received a report concerning the mother’s (“Mother”) mental health, physical health, substance use, housing instability, and lack of ability to care for Sadie.² DSS had prior involvement with Mother due to her history of mental health issues, psychiatric hospitalizations, other health issues, and homelessness. DSS worked with Mother to create a plan for Sadie’s discharge from the hospital, but Mother was unable to follow through on this plan and only visited Sadie one time in the hospital. DSS obtained nonsecure custody of Sadie on 21 February 2019 upon filing a petition alleging she was neglected and dependent, and Sadie remained hospitalized until after the trial court ordered nonsecure custody. Sadie was placed in a foster home upon her release from the hospital on 9 April 2019.

Father, who was incarcerated at the time of Sadie’s birth, was not identified as Sadie’s father on the birth certificate and was not named as a putative father until after the neglect and dependency petition was filed. After paternity testing established him as Sadie’s father, he was served in the matter on 21 August 2019.

The petition was heard on 2 December 2019, and the trial court entered an adjudication and disposition order adjudicating Sadie to be a dependent juvenile on 27 January 2020. The adjudication was entered with the consent of all parties and

² Mother passed away before the initiation of the termination proceedings.

supported by stipulated findings of fact detailing the circumstances that resulted in DSS filing the petition. Although Father was not involved with Sadie prior to the filing of the petition and was thus a non-offending parent, he was incarcerated with a scheduled release date in August 2020, was unable to provide care or supervision for Sadie, had not offered appropriate placement options for Sadie, and requested that she remain in foster care. Father signed up for parenting classes through the Department of Adult Corrections and communicated to DSS that he desired to work on a case plan and reunify with Sadie upon his release. In conjunction with Sadie's adjudication as a dependent juvenile, the court ordered that Sadie remain in DSS custody and that Father be allowed a minimum of two-hours of monthly visitation supervised by DSS upon his release from incarceration. Mother was also allowed visitation and ordered to work on her case plan.

Following the initial permanency planning hearing on 5 March 2020, the court established a primary plan for Sadie of reunification with a secondary plan of custody or guardianship with a court-approved relative or caretaker.

At the next permanency planning hearing on 4 September 2020, the trial court found Father had been released from prison and had entered a case plan with DSS to reunify with Sadie. The case plan identified needs for mental health, housing, and employment. Father had also begun visitation with Sadie. However, at the time of the hearing, Father was back in jail on an assault on a female charge. The permanency planning order also documented Mother's lack of sufficient progress for

reunification, found that the parents “cannot provide adequate care for [Sadie] in a safe home[,]” and ordered that Sadie remain in DSS custody. The court continued Father’s visitation and ordered him to complete a comprehensive clinical assessment (“CCA”), follow recommendations stemming from that assessment, and sign consents for releases of information; complete Group Triple P Parenting classes at PEERS and demonstrate learned skills during visits with Sadie; and establish and maintain safe, verifiable housing for six months.

Following a permanency planning hearing on 11 October 2021, the trial court found that Mother had passed away. The court further found that since the 28 June 2021 permanency planning hearing, Father had not made progress on his case plan, had not visited with Sadie, and had not provided verifiable information about his residence or employment. The court ultimately found Father could not provide adequate care for Sadie in a safe home and concluded it was unlikely she would be returned to his care within the next six months. The trial court changed the primary permanent plan for Sadie to adoption and the secondary plan to reunification.

On 1 December 2021, DSS filed a petition to terminate Father’s parental rights. DSS alleged that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2)–(3), (6)–(7) and that it was in Sadie’s best interests to terminate parental rights so that she could be adopted. Father was in Onslow County jail when he was served the summons for the termination petition on 1 December 2021.

The trial court conducted the adjudicatory portion of the termination

proceeding on 16 and 18 February 2022. At the conclusion of the adjudicatory phase, the trial court concluded grounds existed to terminate Father’s parental rights, appointed a Guardian Ad Litem (“GAL”) for Sadie pursuant to N.C. Gen. Stat. § 7B-1101, and scheduled the matter for disposition in sixty days to allow the GAL to evaluate Sadie’s best interests. The dispositional phase of the proceeding was conducted on 5 May 2022.

On 23 August 2022, the trial court entered an order terminating Father’s parental rights based on its determination that grounds existed to terminate parental rights for willful failure to make reasonable progress and dependency, *see* N.C. Gen. Stat. § 7B-1111(a)(2) and (6) (2021), and that termination of Father’s parental rights was in Sadie’s best interests. Father appeals.

II. ANALYSIS

Father challenges the trial court’s determination at the adjudicatory stage that grounds existed to terminate his parental rights and its determination at the dispositional stage that termination was in Sadie’s best interest. *See* N.C. Gen. Stat. §§ 7B-1109-1110 (2021) (providing a two-step process for termination of parental rights). We address his arguments in turn.

A. Grounds for Adjudication

Father first argues the trial court erred in adjudicating grounds to terminate his parental rights to Sadie.

At the adjudicatory stage, it is the petitioner’s burden to prove the existence of

one or more grounds for termination under N.C. Gen. Stat. § 7B-1111(a) by clear, cogent, and convincing evidence. *In re A.U.D.*, 373 N.C. 3, 5–6, 832 S.E.2d 698, 700 (2019); N.C. Gen. Stat. § 7B-1109(f) (2021). “We review a trial court’s adjudication . . . to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. The trial court’s conclusions of law are reviewable *de novo* on appeal.” *In re K.J.E.*, 378 N.C. 620, 622, 862 S.E.2d 620, 621–22 (2021) (citation omitted). “Unchallenged findings are deemed to be supported by the evidence and are ‘binding on appeal.’” *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020) (quoting *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019)). “[A]n adjudication of any single ground for terminating a parent’s rights under N.C. [Gen. Stat.] § 7B-1111(a) will suffice to support a termination order.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

A trial court may terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) upon finding:

The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2021). A parent is required to “make reasonable

progress under the circumstances towards correcting those conditions that led to the child being placed in [DSS] custody, irrespective of whoever's fault it was that the child was placed in [DSS] custody in the first place.” *In re A.W.*, 237 N.C. App. 209, 217, 765 S.E.2d 111, 115–16 (2014) (internal quotation omitted). While perfection is not required for reasonable progress, the trial court must find and conclude parent's extremely limited progress is not reasonable progress. *In re S.M.*, 375 N.C. 673, 685, 850 S.E.2d 292, 303 (2020).

In this case, the trial court determined that Father's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) because he “willfully left the juvenile, [Sadie], in foster care or placement outside the home for more than twelve months without showing to the satisfaction of the [c]ourt that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile[.]” In support of its determination, the court found Sadie was adjudicated dependent on 2 December 2019 and issued the following findings pertinent to N.C. Gen. Stat. § 7B-1111(a)(2), under Finding of Fact 15:

- A. That the juvenile was first placed in nonsecure custody of [DSS] on February 21, 2019.
- B. That the respondent father has known since August of 2019 that he was the biological father of the juvenile.
- C. That the respondent father was incarcerated until July 9, 2020.

- D. That the respondent father entered into a case plan with [DSS] on or about August 4, 2020. His identified needs were mental health, housing, and employment.
- E. That a Permanency Planning Hearing was held on September 4, 2020. At that hearing, the respondent father was ordered to complete the following:
1. The respondent father shall be afforded visitation a minimum of two hours per month, supervised by [DSS] or its designee;
 2. The respondent father shall complete a Comprehensive Clinical Assessment with the provider of his choice and sign consents for releases of information and follow all resultant recommendations;
 3. The respondent father shall engage in and complete Group Triple P parenting class at PEERS and demonstrate the skills learned therein during his visitations with the juvenile;
 4. That respondent father shall establish and maintain safe, verifiable housing for a minimum of six months.
- F. That the respondent father has not completed any part of his case plan, nor has he complied with the court's prior orders, most importantly the recommended treatment.
- G. That the respondent father has been in and out of jail since 2020, including being incarcerated as recently as January 2022.
- H. That the respondent father arbitrarily moved to Pennsylvania in 2021.
- I. That prior to the week of this hearing the last time the respondent father visited the juvenile was in June of 2021. That the only time the father consistently visited

this juvenile was during the time period of March of 2021 until June of 2021.

- J. That the respondent father has not held gainful employment or maintained stable housing since the petition was filed in 2019.
- K. That the respondent father by and through his actions and inaction has demonstrated and continues to demonstrate that he is unwilling and unable to provide for the care of this juvenile.
- L. That the respondent father has not consistently demonstrated an ability to provide a safe and appropriate home for this juvenile, nor has he demonstrated any ability to provide proper care and supervision of this juvenile.
- M. That the respondent father has not made reasonable progress to alleviate the conditions which led to the removal of the juvenile.

The only finding Father appears to challenge is finding 15F regarding his failure to complete any part of his case plan or comply with court orders. The remainder of the unchallenged findings are deemed supported by evidence and are binding on appeal. *See In re K.N.K.*, 374 N.C. at 53, 839 S.E.2d at 738.

In challenging finding 15F, Father implies that he complied with requirements for mental health and parenting classes. He directs this Court to his own testimony that he has “been seeing a woman” at PORT³ for mental health, that she told him “you’re fine” and did not provide a diagnosis, and that he signed a release of

³ The record does not define the acronym for PORT.

information. Father testified that he did not know what happened after he signed the release, “[b]ut [he] did [his] part.” Father also asserts that he took parenting classes, but he does not contend that he completed them. Father’s challenges to finding 15F are unpersuasive.

Although Father testified to seeing a mental health counselor at PORT, he did not present any additional evidence to support his testimony, and his testimony was contradicted by the testimony from the DSS worker and the DSS supervisor that Father had not completed the required CCA. It is the trial court’s role to determine the credibility of witnesses and the weight given to testimony. *See In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). This Court does not reweigh the evidence or assess credibility. *See In re K.G.W.*, 250 N.C. App. 62, 67, 791 S.E.2d 540, 543 (2016) (citing *Kelly v. Duke Univ.*, 190 N.C. App. 733, 738-39, 661 S.E.2d 745, 748 (2008)).

Since the testimony from the DSS worker and the DSS supervisor supports the finding that Father had not completed a CCA, the finding is binding on appeal. *See In re A.L.*, 378 N.C. 396, 400, 862 S.E.2d 163, 166 (2021) (“A trial court’s finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding.” (citation omitted)). As to parenting classes, though the DSS worker and her supervisor both acknowledged Father had begun parenting classes through a DSS program, both testified that he completed less than half of the required classes. Even Father

testified that he did not complete the classes and that he moved out of state before the classes were completed. Evidence was also presented that Father did not have stable housing or employment, that he only consistently visited with Sadie between March and June 2021, and that since June 2021, he had not visited with Sadie until the week of the termination hearing.

Since evidence supports the trial court's finding that Father "has not completed any part of his case plan, nor has he complied with the court's prior orders," finding 15F is binding on appeal.

Besides Father's challenge to finding 15F, he argues the trial court erred in adjudicating grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(2) because the court's findings do not support a determination of willfulness and failure to account for his incarceration. He asserts that his criminal status complicated efforts to obtain employment and housing, but that he made efforts and was scheduled to begin work and secure housing after the hearing. He argues there was no willfulness for purposes of N.C. Gen. Stat. § 7B-1111(a)(2) because "[he] made the progress he could." We are not persuaded.

As our Courts have explained, "a finding that a parent acted willfully for purposes of N.C. [Gen. Stat.] § 7B-1111(a)(2) does not require a showing of fault by the parent[.]" *In re B.J.H.*, 378 N.C. 524, 530, 862 S.E.2d 784, 791 (2021) (citation omitted), and "[a] finding of willfulness is not precluded even if the [parent] has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699,

453 S.E.2d 220, 224 (1995) (citation omitted). “A [parent]’s prolonged inability to improve [their] situation, despite some efforts in that direction, will support a finding of willfulness regardless of [their] good intentions, and will support a finding of lack of progress sufficient to warrant termination of parental rights under [N.C. Gen. Stat. § 7B-1111(a)(2)].” *In re B.J.H.*, 378 N.C. at 530, 862 S.E.2d at 791 (citation omitted). Additionally, while “[a] parent’s incarceration is a ‘circumstance’ that the trial court must consider in determining whether the parent has made ‘reasonable progress’ toward ‘correcting those conditions which led to the removal of the juvenile[],” *In re C.W.*, 182 N.C. App. 214, 226, 641 S.E.2d 725, 733 (2007); *see also* N.C. Gen. Stat. § 7B-1111(a)(2), our Courts have recognized that “[i]ncarceration . . . is neither a sword nor a shield in a termination of parental rights decision.” *In re M.A.W.*, 370 N.C. 149, 153, 804 S.E.2d 513, 517 (2017) (quotation and citation omitted).

The trial court’s findings in this case refer to Father’s incarceration and show that it was considered by the trial court. The cases relied on by Father where parents were limited from making progress due to their incarceration for the entirety of the case are not analogous to this case. *See In re K.D.C.*, 375 N.C. 784, 793–95, 850 S.E.2d 911, 918–19 (2020) (mother was incarcerated for the entire case); *In re C.W.*, 182 N.C. App. at 227, 641 S.E.2d at 734 (father was incarcerated for the entire period the children were in DSS custody); *In re Shermer*, 156 N.C. App. 281, 290, 576 S.E.2d 403, 409 (2003) (father was incarcerated for the relevant period under a prior version of N.C. Gen. Stat. § 7B-1111(a)(2)). Here, the evidence and findings tend to show

Father's incarceration at the initiation of the case was not the sole reason for Father's failure to make progress as in the cases cited.

Though Father was incarcerated when Sadie was placed in DSS custody and remained incarcerated through her adjudication as a dependent juvenile, he was released from prison in July 2020 and entered into a case plan with DSS in August 2020. Father had from August 2020 until the termination hearing in February 2022 to complete parenting classes and a CCA, to obtain housing and employment, and to visit Sadie in order to show that he was capable of providing proper care and supervision for Sadie. *See In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006) (reasonable progress is evaluated up to the termination hearing). Nevertheless, the evidence and findings tend to show Father continued to engage in activities that resulted in him being in and out of jail throughout the case and as recently as the month before the termination hearing; that he arbitrarily moved to Pennsylvania in 2021, thereby ceasing parenting classes and visits with Sadie and losing contact with DSS for months; and that he had not completed any part of his case plan or complied with court orders.

The trial court acted well within its authority to find and conclude Father's failure to complete any part of his case plan or comply with its orders was not reasonable progress. *In re S.M.*, 375 N.C. at 685, 850 S.E.2d at 303. Furthermore, Father cannot use his incarceration as a shield where he was released from prison in July 2020 but continued to engage in activities that resulted in his repeated

incarceration while Sadie was in DSS custody and while he was supposed to be working towards reunification. *See In re D.M.*, 378 N.C. 435, 439, 861 S.E.2d 740, 744 (2021) (holding a parent’s continued criminal conduct resulting in incarceration after child was placed in DSS custody supported adjudication grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(2)). We hold that Father’s repeated incarceration and his arbitrary move out of state and away from services and Sadie support the trial court’s determination that his failure to make reasonable progress was willful.

Father’s challenge to the adjudication of grounds for termination of parental rights pursuant to 7B-1111(a)(2) is overruled, and we affirm the trial court’s findings that grounds existed to terminate his parental rights.

B. Best Interest Determination

We next turn to Father’s argument that the trial court abused its discretion in determining termination was in Sadie’s best interest.

“After an adjudication that one or more grounds for terminating a parent’s rights exist, the court shall determine whether terminating the parent’s rights is in the juvenile’s best interest.” N.C. Gen. Stat. § 7B-1110(a) (2021). In assessing a juvenile’s best interest,

the court shall consider the following criteria and make written findings regarding the following that are relevant:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.

- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a).

We review the trial court’s dispositional findings to determine if they are supported by competent evidence and review the court’s determination that termination is in a juvenile’s best interest solely for abuse of discretion. *In re K.N.K.*, 374 N.C. at 57, 839 S.E.2d at 740 (citation omitted); *see also Stephens v. Stephens*, 213 N.C App. 495, 503, 715 S.E.2d 168, 174 (2011) (“As long as there is competent evidence to support the trial court’s findings, its determination as to the child’s best interests cannot be upset absent a manifest abuse of discretion.” (citation omitted)). “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.” *In re R.D.*, 376 N.C. 244, 248, 852 S.E.2d 117, 122 (2020) (cleaned up) (quoting *In re A.U.D.*, 373 N.C. at 6–7, 832 S.E.2d at 701–02).

At disposition in this case, the trial court heard the testimony of the DSS worker, Sadie’s foster mother, Father, and the GAL, and it admitted a GAL court

report into evidence. The court issued the following findings in the termination order, addressing the statutory best interest criteria:

2. The juvenile [Sadie] is three years old.
3. The likelihood of the adoption of this juvenile is very high. The juvenile is in a pre-adoptive placement. That her current placement is eager to adopt the juvenile. The juvenile calls her current foster placement Mom and Dad.
4. The termination of parental rights in this matter will aid in the accomplishment of the permanent plan for this juvenile. . . .
5. There is no bond between the juvenile and the respondent father.
6. The juvenile is thriving in her current placement.
7. The [c]ourt finds that the juvenile needs a permanent plan of care and that the juvenile is healthy and has no unique problems which would impede her potential adoption.

Based on these findings, the trial court concluded it was in Sadie's best interest to terminate Father's parental rights.

The trial court's dispositional findings are largely unchallenged and binding on appeal. *See In re K.N.K.*, 374 N.C. at 53, 839 S.E.2d at 738. Father only challenges the trial court's finding that there is no bond between Sadie and him. He directs this Court to evidence that Sadie goes to him when she sees him and refers to him as dad and to the trial court's oral rendering of its dispositional findings in court, in which the court noted there is "some bond" between Sadie and him. We are not persuaded

by this challenge because a review of the record shows that Father relies on statements in the transcript in isolation and out of context.

The evidence in this case established that Father only consistently visited with Sadie between March and June 2021. Since June 2021, Father only visited with Sadie during the week of the adjudicatory portion of the termination hearing and had not attended visits between the adjudicatory and dispositional portions of the termination hearing. In addition to describing the lack of visits, the GAL reported that “[t]he relationship between [Sadie] and [respondent-father] is practically nonexistent[,]” and a DSS worker testified that there was “not really” any bond.

While the DSS worker did testify that Sadie “goes to [Father,]” she could not say that Sadie’s reaction to him was different than to a stranger. Additionally, while foster mother testified that Sadie refers to Father as “dad[,]” the full context of the testimony was, “[s]he refers to him as dad on the phone because we say ‘it’s your daddy[.]’” The foster mother was unsure if Sadie understood what she was saying or just repeating what she was told. All the other evidence was that she referred to her foster parents as mom and dad. Lastly, while the trial court did note “some bond” between Sadie and Father in weighing the evidence and rendering its dispositional findings in court, the court explained that it believed it was more on Father’s side and not reciprocated by Sadie. The court added that any bond was “not a very strong bond” and the court did not believe the “bond really is in the nature of what we would think of as a . . . classical parent-child bond.”

Based on our review of the record, Father failed to show the trial court did not appropriately weigh the evidence in finding of a lack of bond between Sadie and Father and we hold the finding is supported by competent evidence.

Additionally, Father argues he presented evidence at the dispositional hearing that he: (1) had recently obtained housing, (2) had a job lined up, (3) planned to attend parenting classes, (4) had support from his fiancé, and (5) had a mental health counselor that supported his assertion that reunification was possible, and that termination was not in Sadie's best interest. A review of the trial court's dispositional findings shows that the court performed a reasoned analysis of the relevant criteria in reaching its determination that termination of Father's parental rights was in Sadie's best interest. Accordingly, we hold the trial court did not abuse its discretion and affirm its best interest determination.

III. CONCLUSION

Having upheld the trial court's adjudication of grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and its determination that termination was in Sadie's best interest, we affirm the order terminating Father's parental rights.

AFFIRMED.

Judge TYSON and FLOOD concur.

Report per Rule 30(e).