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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-79

Filed 05 September 2023

Chatham County, No. 20 JT 61

IN THE MATTER OF: B.C.B.

Appeal by respondent from order entered 8 September 2022 by Judge Sherri Murrell in Chatham County District Court. Heard in the Court of Appeals 17 July 2023.

Stephenson & Fleming, LLP, by Jane Thompson, for petitioner-appellee Chatham County Department of Social Services.

Rebekah W. Davis, for respondent-appellant-father.

Rosenwood, Rose & Litwak, PLLC, by Nancy S. Litwak, for guardian ad litem.

FLOOD, Judge.

Respondent-Father appeals from the trial court's order terminating his parental rights to his minor child, Ben.¹ Ben's mother ("the juvenile's mother"), whose rights were also terminated, is not a party to this appeal. Respondent-Father argues that the trial court erred by terminating his parental rights on the basis of

¹ Pseudonyms are used to protect the minor child's identity in accordance with N.C.R. App. P. 42(b).

neglect and dependency. After careful review, we affirm the termination of Respondent-Father's parental rights.

I. Factual & Procedural Background

Respondent-Father's minor child, Ben, was born on 19 August 2020. On 3 September 2020, Respondent-Father and the juvenile's mother took Ben to the emergency room because his lips appeared blue. At that time, testing revealed that Ben had high potassium levels and low protein levels, which indicated malnutrition. Ben was scheduled to be seen the next day for his potassium levels to be rechecked, but Respondent-Father and the juvenile's mother missed that appointment, and Ben was not seen for a follow up appointment until 16 September 2020. At the appointment, it was determined that Ben had gained only two pounds since birth when, by comparison, healthy infants his age are supposed to gain one pound per week. During that appointment, the juvenile's mother was observed to have erratic behavior including delayed speech, difficulty coming up with answers, an unsteady stance, and her head was swaying side to side.

On 17 September 2020, Chatham County Department of Social Services ("DSS") asked both parents to complete drug screens by the end of the day. Neither Respondent-Father nor the juvenile's mother complied. On 18 September 2020, DSS was unable to contact either parent, so a representative from the Chatham County Sheriff's Office went to the home for a "well-child check." During this check, law enforcement observed the juvenile's mother's gait was "off," and she had slurred

speech. Law enforcement reported this information to DSS, which resulted in a Safety Plan being implemented the following day. Per the Safety Plan, Ben's contact with his mother would be supervised by either Respondent-Father or Ben's paternal grandmother. While in the home to implement the Safety Plan, the DSS social worker observed for herself that the juvenile's mother's gait was "off," and she was slurring her speech, which reinforced the suspicion of continued substance use.

Respondent-Father was asked to comply with three other drug screens between 22 September 2020 and 5 October 2020, but failed to comply each time. On 6 October 2020, DSS filed a juvenile petition, and Ben was taken into nonsecure custody and placed in a foster home.

Following an Adjudication Hearing on 6 October 2020, Respondent-Father entered into a family services agreement (the "Agreement") to address the various issues that led to Ben being removed from the home. These issues included emotional and mental health, substance use, parenting skills, employment, and income management. Per the Agreement, Respondent-Father was to also comply with random drug screens. Three days later, on 9 October 2020, Respondent-Father complied with a random drug screen, and while the urine screen was negative, the hair follicle screen was positive for methamphetamines and oxycodone.

During a nonsecure custody hearing on 14 October 2020, Respondent-Father asked for Ben to be placed into his care in accordance with the previous Safety Plan. DSS did not agree due to Respondent-Father's unwillingness to comply with several

drug screen requests, his lack of concerns regarding the juvenile's mother's demeanor while caring for Ben, and his lack of follow up for Ben's medical needs following Ben's emergency room visit.

Alternatively, Respondent-Father asked if Ben could be placed in the care of his paternal grandmother. The trial court considered a kinship placement with Ben's paternal grandmother, but determined that because she worked outside the home and would not be able to supervise visitations, a placement with her would not be feasible. Further, Ben's paternal grandmother shared no concern regarding the juvenile's mother's demeanor while caring for Ben or the lack of follow-up after Ben's hospitalization. Ultimately, Ben stayed in DSS's custody, and Respondent-Father was given visitation rights.

On 30 November 2020 an Adjudication Hearing took place at which Ben was adjudicated a neglected and dependent juvenile. In its order, the trial court made the following findings of fact:

26. [DSS] met with [the juvenile's mother and Respondent-Father] on 17 September 2020 and asked them to complete drug screens with Chatham 360 by the end of the day. They did not comply with these drug screens despite [DSS] offering to provide [them] with transportation.

...

31. On 22 September 2020, [the juvenile's mother and Respondent-Father] were asked to complete drug screens on 25 September 2020. They did not comply with this drug screen request.

32. On 30 September 2020, [the juvenile's mother and Respondent-Father] were asked to complete drug screens on 2 October 2020 . . . [They] did not comply with this drug screen. Respondent-Father reported that he didn't understand the reason for these screens and did not understand the [DSS] concerns.

33. On 5 October 2020, [the juvenile's mother and Respondent-Father] were asked to comply with a drug screen with Chatham 360 by the end of the day. They did not comply with this screen. Respondent-Father's reason for not complying was that he had to get a check cashed, despite having four and a half hours to complete this screen.

. . .

39. Respondent-Father has children with two different women, both of whom have a history of methamphetamine use. He has reported to [DSS] that he has no concerns with either of these women in regard to their parenting of their children.

40. [The juvenile's mother] and Respondent-Father tested positive for methamphetamines and oxycodone in a hair follicle test administered on 9 October 2020 that tested back three months for substances.

The order went on to issue the following decrees:

12. [Respondent-Father] shall fully participate in a substance abuse assessment and follow all recommendations.

13. [Respondent-Father] shall submit to random urine, hair follicle, fingernail, and any other drug screens within the timeframe provided by [DSS] at the time of the request but not more than 24 hours. Missed screens or altered samples . . . will be treated as non-compliance with this order.

Following the 30 November Adjudication Hearing, Respondent-Father continued testing positive for drugs. Following Respondent-Father's expressed desire to stop using substances, DSS made several recommendations including substance abuse inpatient and outpatient treatments, but he did not comply.

After missing thirteen sessions of outpatient treatment, Respondent-Father was referred to group therapy sessions and a 12-step program. Additionally, Respondent-Father "engaged in relapse prevention group therapy sessions, but they were paused when he did not comply with [the] drug testing requirements." Respondent-Father flatly refused to participate in the 12-step program.

On 21 July 2021, Ben's social worker, Jessica Weinkle ("Ms. Weinkle"), conducted a visit at Respondent-Father's home and was exposed to an airborne substance. While in the home, Ms. Weinkle could hear loud, distinct retching or coughing from further within home; she assumed the sounds came from the juvenile's mother in the bedroom. After Ms. Weinkle was exposed to the substance, she purportedly was left impaired, experiencing hyper-focused vision, disorientation, and trouble sleeping that night because she was "hyper." A couple days later, she experienced a terrible headache, post-nasal drip, and sore muscles throughout her body. Ms. Weinkle believed the airborne substance to be methamphetamines.

As a result of drug tests that were positive for methamphetamines and amphetamines, Respondent-Father's visitation rights with Ben were suspended on 12 August 2021, with the condition that his visitation rights would be restored only

if he complied with Family Treatment Court or actively engaged in substance use disorder recovery. He did neither. At a permanency planning review hearing on 14 October 2021, the permanent plan for Ben became adoption, and reunification became the secondary plan due to Respondent-Father's lack of progress.

Between October 2021 and February 2022, Respondent-Father tested positive on three out of five urine drug tests for methamphetamines and amphetamines. On 9 February 2022, he tested negative on the urine drug test, but tested positive on the hair follicle test. Between October 2021 and March 2022, Respondent-Father failed to show for six scheduled drug screens.

In January and February 2022, Respondent-Father was given several opportunities by DSS to pursue treatment at different places, but he took none. On 24 March 2022, a court order stipulated that Respondent-Father may receive visitation rights if both he and the juvenile's mother individually were able to pass drug tests on the day of the family time session. If either Respondent-Father or the juvenile's mother tested positive for drugs, then neither would be allowed visitation. Between April 2022 and August 2022, Respondent-Father continued to fail drug tests or failed to appear for drug tests. In the rare instance Respondent-Father tested negative, he would test positive a few days later.

To achieve the permanent plan of adoption, a termination of parental rights hearing was set for 8 September 2022. After reviewing the case history; reading previous adjudication orders, dispositions orders, substance use assessments, recent

drug screens, and drug screen timelines; and hearing the testimony of Ms. Weinkle and Ben's Guardian ad Litem, the trial court made several findings of fact indicating Respondent-Father's general unwillingness to comply with the Agreement and court's orders. The findings of fact from the trial court's termination of parental rights order read in pertinent part:

- 20(u). Respondent-Father and the juvenile's mother tested positive for methamphetamines and oxycodone in a hair follicle test administered on 9 October 2020 that tested back three months for substances.
...
- 20(v). Respondent-Father has a history of substance use and criminal charges.
...
- 20(y). At the time of the petition, Respondent-Father had not engaged in any type of outpatient substance abuse treatment. He was advised to contact Ms. Foxx for a substance use assessment. However, this had not been done at the time of the adjudication.
...
- 20(bb). Respondent-Father has tested for high levels of methamphetamines, along with other addictive, mood-altering, and life-threatening substances during the underlying case.
...
- 20(dd). Respondent-Father has failed to show for appointments to enter detox.
...
- 20(gg). Respondent-Father has failed to show for numerous requested drug screens.

- 20(hh). When he has shown for drug screens, they have been positive for numerous substances, including methamphetamines, amphetamines, opiates, alcohol, benzodiazepines, and THC.
...
- 20(oo). Respondent-Father took the Adult and Adolescent Parenting Inventory (AAPI) which indicated he was at high risk for child maltreatment. He started parenting classes but discontinued them in July 2021 and has not resumed instruction.
...
27. Respondent-Father has refused to follow recommendations to address his long-standing substance use disorder and remains in active addiction, which, in turn, has kept him from adequately addressing the other conditions.

Respondent-Father's parental rights were terminated following the hearing.

Respondent-Father appealed.

II. Jurisdiction

As an initial matter, this Court will address Respondent-Father's petition for a writ of certiorari to review the trial court's orders. In a juvenile matter, final orders of a lower court may be appealed directly to this Court when that order changes the legal custody of a juvenile. N.C. Gen. Stat. § 7B-1001(a)(4) (2021). Further, the North Carolina Rules of Appellate Procedure permit a writ of certiorari to be issued in this Court's discretion "when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C.R. App. P. 21(a)(1). Finally, this Court has previously noted the "importance of issues involving the relations between parents and their

children” as a factor when considering a petition for writ of certiorari in juvenile cases. *In re K.C.*, 199 N.C. App. 557, 558, 681 S.E.2d 559, 561 (2009) (permitting the review of an adjudication order and disposition order, despite the initial notice of appeal failing to reference the disposition order).

Here, the trial court entered its termination of parental rights order on 13 October 2022, and Respondent-Father filed notice of appeal on 16 November 2022. As such, Respondent-Father failed to file timely notice of appeal pursuant to N.C. Gen. Stat. § 7B-1001(b). *See* N.C. Gen. Stat. § 7B-1001(b). Because the parental rights and the best interests of a juvenile hang in the balance of this appeal, however, this Court grants Respondent-Father’s petition for writ of certiorari and proceeds on the merits. *See In re K.C.*, 199 N.C. App. at 558, 681 S.E.2d at 561.

III. Standard of Review

This Court reviews the 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.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (citing *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). “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).

IV. Analysis

On appeal, Respondent-Father challenges the trial court’s termination of his parental rights, arguing that the trial court’s findings of fact were improper in that

(1) they were mere recitations of allegations made in the termination motion and prior, and (2) some of the evidence admitted by the trial court was inadmissible and highly prejudicial.

A. Wording of the Findings of Fact

First, Respondent-Father contends that the trial court “transferred” allegations made from previous motions and orders to findings of fact and therefore, the findings of fact were insufficient to support the conclusion that his parental rights should be terminated under N.C. Gen. Stat. §§ 7B(a)(1) and (2). We disagree.

During an adjudicatory hearing, “the trial court must, through process of logical reasoning, based on the evidentiary facts before it, find the ultimate facts essential to support the conclusion of law.” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (internal quotation marks omitted) (citation omitted). “These findings ‘must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.’” *In re J.W.*, 241 N.C. App 44, 48, 772 S.E.2d 249, 253 (2015) (quoting *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002)). “[I]t is not *per se* reversible error for a trial court’s fact findings to mirror the wording of a petition or other pleading[.]” *In re J.W.*, 241 N.C. App at 48, 772 S.E.2d at 253. On de novo review, it is this Court’s duty to “examine whether the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on the evidentiary facts before it, found the ultimate facts

necessary to dispose of the case.” *Id.* at 48, 772 S.E.2d at 253. If after review, this Court is satisfied, “it is irrelevant whether those findings are taken verbatim from an earlier pleading.” *Id.* at 49, 772 S.E.2d at 253.

In the case *sub judice*, our review of the Record evinces the trial court found the ultimate facts necessary to support its conclusion of law through a process of logical reasoning. To make its determination, the trial court relied on several sources and considered previous adjudication orders, dispositions orders, substance use assessments, recent drug screens, drug screen timelines, and testimony from Ben’s social worker and Guardian ad Litem.

For example, as demonstrated in Finding of Fact 20(y), “[a]t the time of the petition, Respondent-Father had not engaged in any type of outpatient substance abuse treatment.” This finding of fact was corroborated by testimony from Renita Foxx (“Ms. Foxx”), the court program director for Chatham County, responsible for overseeing substance use disorder assessments. Further, Findings of Fact 20(u), 20(bb), 20(gg), and 20(hh) reflect that Respondent-Father did not comply with the court’s ordered random drug screens, and, if Respondent-Father *did* comply, his tests consistently came back positive for various illicit substances. These findings of fact were supported by testimony given by Ms. Weinkle as well as the reports from Respondent-Father’s clinical drug screenings.

Collectively, these sources corroborate the trial court’s ultimate finding that Respondent-Father neglected Ben, and the “likelihood of future neglect is high,

because Respondent[-F]ather continues to use highly addictive and life-threatening substances.”

Additionally, Respondent-Father does not challenge any specific findings of fact made by the trial court as being unsupported; rather, he merely alleges the facts are “less than specific” incorporations from prior motions that “do not reveal exactly what happened with [Respondent-Father] and why his parental rights were being terminated[.]” For the reasons discussed above, we conclude that argument lacks merit. Accordingly, we reject Respondent-Father’s argument that the trial court’s order contained insufficient facts to support its conclusion that his parental rights should be terminated. *See In re J.W.*, 241 N.C. App at 49, 772 S.E.2d at 254.

B. Propriety of Evidence Admitted

Next, Respondent-Father argues the trial court, as a finder of fact, relied on improperly admitted evidence and that those findings were prejudicial. We disagree.

“[T]he trial court may not rely solely on prior orders and reports but must receive some oral testimony and make an independent determination regarding the evidence presented.” *In re T.N.H.*, 372 N.C. 403, 410, 831 S.E.2d 54, 60 (2019). “Our appellate courts have consistently held that a trial court may take judicial notice of the underlying juvenile case file at a hearing on a termination of parental rights petition.” *In re J.D.O.*, 381 N.C. 799, 806, 874 S.E.2d 507, 514 (2022).

Respondent-Father argues the trial court did not limit the scope of its judicial notice to exclusively the decretal portions of the prior orders; rather, it took judicial

notice of everything from reports to “tests, pictures, and other exhibits [] allowed into evidence at a termination hearing.” This argument lacks merit.

First, a review of the transcript makes clear the trial court took judicial notice of just the decretal portions of the previous orders:

Ms. Stephenson: -- I'll hand up, but also there is a March 2022 order that establishes paternity. And so we'd like you to take judicial notices of that. And then also in addition to that take judicial notice of the decretal sections of the orders to determine what was ordered just for that purpose, not the findings.

The Court: Any objection?

Mr. Eldred: Judge, I think you can take judicial notice if the orders have been entered, but if you're going to say you're taking judicial notice of all the findings of fact in that order (indiscernible) right now, then I think that's different than saying –

The Court: I think they're asking to take judicial notice of the decretal portions of the order. That was what was ordered. Do I understand that correctly?

Mr. Eldred: Is that accurate?

Ms. Stephenson: That's right.

Second, Finding of Fact 9 from the trial court's order terminating Respondent-Father's parental rights specifically states “the Court takes judicial notice of the paternity determination in the Order entered 25 April 2022 from the 24 March 2022 hearing *and the decretal sections* of all prior orders.” (emphasis added).

Finally, even assuming the trial court *did* improperly consider prejudicial evidence, it still had ample evidence to support its conclusion that Ben was neglected and dependent and that Respondent-Father had failed to make reasonable progress in his case plan. For example, the trial court heard testimony from Ms. Weinkle in which she explained Respondent-Father had not visited with Ben for over one year due to his inability to test negative on a drug screen. Ms. Weinkle testified:

[Respondent-Father] tested positive on April 5th for methamphetamines and alcohol. On April 20th for amphetamines and oxycodone. He did not show in May. In June he tested positive for methamphetamines and amphetamines. In July of 2022 he tested positive for methamphetamines, amphetamines, alcohol, and cocaine. And he did not show in August.

Ms. Weinkle further testified that Respondent-Father was ordered to complete substance use assessments, participate in family treatment court, and submit to random drug screens but did not comply with those orders. The trial court also heard the testimony of Ms. Foxx, who corroborated Ms. Weinkle's testimony that Respondent-Father failed to complete the court mandated substance use treatment. All of this testimony, taken together with the previous orders and permanency planning reports, show the trial court properly relied on prior orders, reports, and testimony and independently determined those sources provided clear, cogent, and convincing evidence to support its findings and conclusion. *See In re T.N.H.*, 372 N.C. at 410, 831 S.E.2d at 60.

IV. Conclusion

IN RE: B.C.B.

Opinion of the Court

Because the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and these findings in turn support the conclusions of law that Respondent-Father neglected Ben and failed to make reasonable progress in correcting the conditions leading to removal, we affirm the termination of Respondent-Father's parental rights.

AFFIRMED.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).