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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-613

Filed 5 March 2024

Guilford County, No. 21JT553

IN THE MATTER OF: R.V.D.

Appeal by respondent from order entered 21 March 2023 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 21 February 2024.

Ewing Law Firm, P.C., by Robert W. Ewing, for the respondent-appellant-mother.

Guilford County Department of Health and Human Services, by Mercedes O. Chut, for the petitioner-appellee.

K&L Gates LLP, by Maggie D. Blair, for guardian ad litem.

TYSON, Judge.

Mother (“Respondent”) appeals from an order entered on 21 March 2023, which terminated her parental rights to her minor child. We affirm.

I. Background

Respondent is the biological mother of R.V.D., who was nearly twenty months old when Respondent’s parental rights were terminated on 21 March 2023. *See* N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of minors). R.V.D. remained

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in Respondent's care, custody, and control for a very limited time, as the Guilford County Department of Health and Human Services ("DHHS") had obtained nonsecure custody of R.V.D. five days after she was born.

DHHS noted several problems with Mother's ability to prospectively parent while pregnant with R.V.D. Although Respondent was incarcerated for the first two months of her pregnancy with R.V.D., Respondent failed to receive proper prenatal care after release from custody. Respondent attended only one doctor's visit when she was thirty weeks pregnant. Respondent tested positive for the presence of cocaine, benzodiazepine, and marijuana inside her body on the day R.V.D. was born. Respondent did not possess a crib, car seat, diapers, wipes, clothes, or any other supplies to care for a newborn child, despite having two prior children.

Respondent also struggles to effectively manage and treat her Post Traumatic Stress Disorder ("PTSD"), Bipolar Disorder, and Schizoaffective Disorder. Respondent was involuntarily committed for psychiatric care on multiple occasions throughout her pregnancy with R.V.D. to treat her mental health conditions.

A Temporary Safety Placement was arranged upon R.V.D.'s discharge from the hospital. Respondent agreed to place R.V.D. into the custody of a family friend. Within twenty-four hours, Respondent violated the temporary custody agreement, removed R.V.D. from the friend's home, and brought the infant to the maternal grandmother's home, which was a boarding house.

Respondent's Mother, the maternal grandmother of R.V.D., called Step by

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Step, which is a drug and alcohol treatment facility, and alerted a worker that Respondent had removed R.V.D. from the Temporary Safety Placement. R.V.D. was taken to the hospital to be examined. Respondent admitted to DHHS she was under the influence of tetrahydrocannabinol (“THC”) and methamphetamines when she removed R.V.D. from the agreed-upon placement.

R.V.D. was taken into DHHS custody on 2 August 2021. The juvenile was adjudicated as neglected and dependent on 21 January 2022, but the order was not signed and entered until nearly four months later on 5 May 2022. Respondent’s case plan required her to: (1) obtain and maintain stable housing; (2) complete a parenting assessment and follow all recommendations; (3) obtain and maintain stable employment; (4) submit to substance abuse assessments, recommended treatment, and random drug testing; and, (5) complete a mental health assessment and comply with all recommendations.

A permanency planning hearing was held on 8 July 2022. The primary permanent plan was changed to adoption with a secondary concurrent plan of reunification in the order entered on 20 August 2022. The order contained the following findings of fact regarding Respondent’s ability to maintain stable and appropriate housing:

[Respondent] is currently incarcerated at the Guilford County Detention Center for Felony First Degree Murder. [Respondent] has been incarcerated since January 27, 2022. Social Worker Barry went to the Guilford County Jail on February 2, 2022 and met with [Respondent]. She

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was very emotional and unable to speak much. [Respondent] asked about [R.V.D.] and if Social Worker has spoken with her mother. [Respondent] was unable to speak about why she was in the jail. On March 2, 2022, Social Worker Barry went to the Guilford County Jail to speak with [Respondent]. Social Worker Barry was notified that [Respondent] is on a 2-officer hold and is unable to come out of her cell at this time due to her aggression. [Respondent] was not complying with coming out of her cell and was not dressed as she was wrapped in her bed blanket. Social Worker Barry was notified to come back on a different day. On March 16, 2022, Social Worker Barry and Social Worker Escalera went to the Guilford County Jail to see [Respondent]. The Department was notified that [Respondent] was still on a 2-officer hold and very aggressive with staff. [Respondent] flooded her cell the week before and ruined everything in it. Social Workers were advised that they could go speak with [Respondent] at her cell door. Social Workers went with the officer to the pod to speak with [Respondent] through her cell door. Social Workers were able to speak with [Respondent] about how things have been going for her while in detention. [Respondent] did not have much to say at this time but was doing okay. On May 3, 2022 Social Worker Barry called the Guilford County Jail to see how [Respondent] was doing prior to coming for a visit. Social Worker Barry was informed that [Respondent] was in a good mood today but was on another call with a lawyer. Social Worker Barry did not go to the jail for a visit. On May 11, 2022 Social Worker Barry attempted to go to the Guilford County Jail for a visit with [Respondent]. SW Barry was unable to complete a visit because [Respondent] is classified as “can’t be around other inmates[.]” Other inmates were out in her unit at this time so they could not take [Respondent] out of her cell. Jail staff was unsure how long that would be before they would be able to let her out. On June 22, 2022, Social Worker Barry completed a visit with [Respondent] and was able to meet with [Respondent]. [Respondent] reported that she was doing okay. She went through her daily routine with the social worker. [Respondent] informed the Department that she has

another court date on September 7, 2022, and she recently had a court date, but she did not attend. [Respondent] informed Benny, [Respondent]’s mother’s ex-boyfriend, would be giving her money and sending her books to read. [Respondent] reported that her blood work and urine test have come back negative for pregnancy, but she has felt kicks and knows she is pregnant. [Respondent] informed the Department there are no classes for her to attend at this time due to COVID and has not spoken with a therapist. [Respondent] is compliant with her medication at this time.

A petition seeking termination of Respondent’s parental rights was filed on 27 September 2022. The petition alleged termination grounds pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), (a)(6), and (a)(7) (2023). The court concluded grounds existed to terminate Respondent’s parental rights according to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), (a)(6), and (a)(7) in order entered 21 March 2023. Mother filed a notice of appeal on 18 April 2023.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 7B-1001(a)(7) (2023).

III. Issues

Respondent argues the trial court erred by concluding grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), (a)(6), and (a)(7) to terminate Respondent’s parental rights to the care, custody, and control of R.V.D. Respondent argues each of the grounds for termination were not supported by sufficient evidence, and asserts evidence supporting whether lawful grounds exist for the termination of

her parental rights must be examined up until the time of the termination hearing. She asserts the trial court's findings of fact fail to account for her circumstances at the time of the termination hearing and instead "primarily address . . . circumstances which existed prior to her arrest on January 27, 2022[,] and not at the time of the termination hearing[,] which occurred a year later."

IV. Termination of Parental Rights

"[A]n adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order. . . . [I]f this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citations omitted).

A. Standard of Review

"We review a trial court's adjudication [to terminate parental rights] under N.C.G.S. § 7B-1111 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) (citation and internal quotation marks omitted). "The trial court's supported findings are deemed conclusive even if the record contains evidence that would support a contrary finding." *In re L.D.*, 380 N.C. 766, 770, 869 S.E.2d 667, 671 (2022) (citation and internal quotation marks omitted).

Unchallenged findings of fact are presumed to be supported by sufficient

evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (“Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” (citations omitted)).

B. Analysis

In a termination of parental rights hearing, “[t]he burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence.” N.C. Gen. Stat. § 7B-1109(f) (2023). When a challenged finding of fact is not necessary to support a trial court’s conclusions, those findings “need not be reviewed on appeal.” *See In re C.J.*, 373 N.C. 260, 262, 837 S.E.2d 859, 860 (2020) (citation omitted).

Courts are limited to certain statutorily defined grounds when terminating a parent’s rights to the care, custody, and control of their child. One of those grounds provides a court may terminate a parent’s parental rights if the evidence and findings clearly and convincingly demonstrate:

(6) That 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. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6).

A “dependent juvenile” is one who “has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) the juvenile’s parent, guardian, or custodian is unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” N.C. Gen. Stat. § 7B-101(9) (2023).

An adjudication terminating parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) “must address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005) (citing N.C. Gen. Stat. § 7B-101(9)).

Because proof of both the parent’s incapability to provide proper care and supervision and the parent’s lack of an alternative child care arrangement is required to terminate parental rights under N.C.G.S. § 7B-1111(a)(6), a trial court may adjudicate the nonexistence of this ground by finding the absence of either element, or by finding the petitioner’s failure to prove either element by clear, cogent, and convincing evidence.

In re K.R.C., 374 N.C. 849, 859-60, 845 S.E.2d 56, 63 (2020) (citations omitted).

In the case of *In re A.L.S.*, a respondent-mother’s parental rights were terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) because the mother was currently incarcerated and “was not scheduled to be released from imprisonment for at least twenty-two additional months and potentially faced up to forty-two additional

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months' imprisonment." *In re A.L.S.*, 375 N.C. 708, 714, 851 S.E.2d 22, 27 (2020). Our Supreme Court explained respondent-mother's incarceration provided "ample support for the trial court's determination that she was incapable of providing for the proper care and supervision of the children and that there was a reasonable probability that her incapability would continue for the foreseeable future." *Id.* (first citing *In re L.R.S.*, 237 N.C. App. 16, 21, 764 S.E.2d 908, 911 (2014); and then *In re N.T.U.*, 234 N.C. App. 722, 760 S.E.2d 49 (2014)). Further, "[t]he trial court's conclusion that respondent-mother was incapable of providing for the proper care and supervision of [her children] for the foreseeable future flows logically from the findings of fact that detail the nature and extent of her continued incarceration." *Id.* at 716, 851 S.E.2d at 29 (citation omitted).

The trial court made the following findings of fact regarding the termination of Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6):

a. The mother, [Respondent,] has not engaged in any substance abuse or mental health treatment in order to correct those conditions that le[d] to the juvenile coming into the custody of the Department. [Respondent], prior to becoming incarcerated, did not enter into a case plan or engage in any services such as parenting education, drug screenings, therapies, or medication management. Due to [Respondent] not engaging in any services the likelihood is high that she will remain incapable from providing proper care and supervision to the juvenile for the foreseeable future due to ongoing and untreated substance abuse and mental health concerns. Additionally, [Respondent] is currently incarcerated for Felony First Degree Murder with no release date scheduled.

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c. The parents have not come forward with an appropriate and viable alternative child care arrangement.

The trial court listed Respondent's pending probation violation and criminal charges for assault with a deadly weapon and for first-degree murder. The trial court's findings of facts included a list of Respondent's eight prior criminal convictions and an infraction, which could increase her prior record level and punishment for any new criminal convictions. *See* N.C. Gen. Stat. §§ 15A-1340.14 and 1340.17 (2023) (providing the number of prior record level points assigned to Respondent's prior felonies, which would elevate Respondent's presumptive range minimum sentence if Respondent were convicted of second-degree murder). The list included the CRS numbers for each of Respondent's pending charges, the offense date, and the disposition or next hearing date. The first-degree murder of Respondent's brother allegedly occurred on 28 January 2022, and the next hearing date was listed as "pending indictment."

Here, the trial court found R.V.D. had not been placed in an appropriate and viable alternative child care arrangement. The trial court also included facts demonstrating Respondent was "incapable of providing for the proper care and supervision of the juvenile" and facts supporting the conclusion "there [was] a reasonable probability that the incapability will continue for the foreseeable future." N.C. Gen. Stat. § 7B-1111(a)(6) (2023).

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Respondent's contention that the court failed to consider her circumstances at the time of the hearing is without merit. The trial court considered and addressed Respondent's current circumstances by noting she was "currently incarcerated for Felony First Degree Murder with no release date scheduled." *In re A.L.S.*, 375 N.C. at 714-16, 851 S.E.2d at 27-29. Respondent's arguments are overruled.

V. Conclusion

Respondent's parental rights were properly terminated under N.C. Gen. Stat. § 7B-1111(a)(6). *Id.* We need not address Respondent's remaining arguments on appeal regarding grounds for termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (7). *In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71. The trial court's order is affirmed. *It is so ordered.*

AFFIRMED.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).