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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-766

Filed 5 March 2024

Columbus County, No. 21 JT 84

IN THE MATTER OF: A.A.G.

Appeal by Respondent-Father from orders entered 27 January 2023 by Judge Sarah McPherson in Columbus County District Court. Heard in the Court of Appeals 20 February 2024.

Jane R. Thompson for Petitioner-Appellee Columbus County Department of Social Services.

Edward Eldred for Respondent-Appellant Father.

William L. Gardo, II, for guardian ad litem.

GRIFFIN, Judge.

Father appeals from the trial court's orders of adjudication and disposition terminating his parental rights to his minor child Amy.¹ Father contends the trial court erred as the findings of fact, within the order of adjudication on termination, were insufficient to support the conclusions of law stating grounds existed to

¹ We use a pseudonym for ease of reading and to protect the identity of the juveniles. See N.C. R. App. P. 42(b).

terminate his parental rights. We hold the trial court did not err.

I. Factual and Procedural Background

On 13 September 2021, Amy was born to Father and Mother. On 17 September 2021, Columbus County Department of Social Services received a report noting Amy had been born in the home of Mother and had not received medical attention. DSS responded to the home and found Mother was impaired. Father was not at the home at the time of the visit.

Amy was taken to the hospital where it was found she had illicit drugs in her system. Additionally, Amy had to be treated for dehydration and a serious infection. While at the hospital, Mother told DSS she had outstanding warrants. Mother left the hospital and never returned. Amy remained hospitalized for three weeks.

On 17 September 2021, DSS filed a petition alleging Amy was abused, neglected, and dependent. DSS also took physical custody of Amy. On 24 September 2021, Father was served with notice but did not attend the adjudication hearing on 1 November 2021. On 14 December 2021, the trial court entered an order adjudicating Amy as neglected and dependent.

On 21 March 2022, a permanency planning hearing was held. On 12 April 2022, the trial court entered an order in which DSS was relieved of any reunification efforts with Father and Mother. On 16 June 2022, DSS filed a petition seeking termination of parental rights of both parents. The termination hearing was originally calendared for 21 September 2022 but continued until 5 January 2023 in

order to serve Mother by publication.

On 5 January 2023, the matter came on for hearing in Columbus County District Court. On 27 January 2023, the trial court entered an order of adjudication and an order of disposition terminating the parental rights of both Father and Mother.

On 17 May 2023, Father filed notice of appeal. On 7 July 2023, Father filed a petition for writ of certiorari. On 25 August 2023, this Court entered an order granting Father's petition.

II. Analysis

Father contends the trial court's findings of fact were insufficient to support the trial court's conclusions of law within the adjudication order, requiring this Court to reverse both the adjudication order and the disposition order. We disagree.

We review the trial court's adjudication order to determine whether there was clear, cogent, and convincing evidence to support the trial court's findings of fact and whether those findings support the conclusions of law. *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted); *see In re J.M.*, 275 N.C. App. 517, 521, 854 S.E.2d 158, 161 (2020) ("Unchallenged findings are binding on appeal." (internal marks and citation omitted)). We review the trial court's conclusions of law *de novo*. *See In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022).

Where the trial court enters an adjudication order concluding multiple grounds for termination exist and a respondent-parent appeals, this Court need only uphold

the trial court's order as to one of those grounds. *See In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (“[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.” (citation omitted)). If we uphold the trial court’s order, noting any one ground for termination exists, we need not review any remaining grounds. *See In re C.J.*, 373 N.C. 260, 263, 837 S.E.2d 859, 861 (2020).

Father contends the trial court erred in concluding grounds existed for terminating his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6), (7), and (9), as the findings of fact were insufficient to support such a conclusion.² Specifically, as to the trial court’s conclusion concerning N.C. Gen. Stat. § 7B-1111(a)(9), Father argues the trial court failed to make the required findings as Finding of Fact 33 is actually a conclusion of law.

Our Court has previously stated “any determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of fact.” *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal marks and citation omitted). On the other hand, “any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law[.]” *Id.* In considering these classifications, our Supreme Court noted there are two types of facts: ultimate facts and evidentiary facts. *Woodard v. Mordecai*, 234

² Despite Father’s contention regarding N.C. Gen. Stat. § 7B-1111(a)(6), the trial court only found grounds existed for terminating his rights under § 7B-1111(a)(1)-(3), (7), and (9).

N.C. 463, 470, 67 S.E.2d 639, 644 (1951). Ultimate facts are the final facts required to establish the existence of a ground for termination while “evidentiary facts are those subsidiary facts required to prove the ultimate facts.” *In re G.C.*, 384 N.C. 62, 65, 884 S.E.2d 658, 661 n.3 (2023) (internal marks and citation omitted). Thus, “an ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning.” *Id.* “A trial court’s finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court’s ultimate finding.” *State v. Fuller*, 376 N.C. 862, 864–65, 855 S.E.2d 260, 263 (2021) (citation omitted).

Under N.C. General Statutes, section 7B-1111(a)(9), the trial court may terminate a parent’s rights upon finding and concluding:

The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

N.C. Gen. Stat. § 7B-1111(a)(9) (2023). Thus, the trial court must make findings as to two separate elements: “(1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home.” *In re A.W.*, 288 N.C. App. 123, 133, 885 S.E.2d 130, 137 (2023) (internal marks and citation omitted).

Relevant here, the trial court stated in its findings of fact,

33. That the parental rights of respondent parents with respect to another child of respondent parents have been terminated involuntarily by a court of competent jurisdiction and respondent parents lack the ability or

willingness to establish a safe home for the juvenile.

This Finding includes reference to both elements, as required by N.C. Gen. Stat. § 7B-1111(a)(9). However, Father contends this Finding is instead a conclusion of law.

Upon review of this finding, we hold the portion of Finding of Fact 33 which states, “[t]hat the parental rights of respondent parents with respect to another child of respondent parents have been terminated involuntarily by a court of competent jurisdiction,” is an evidentiary finding in that the determination was made through logical reasoning based on the evidence presented at the hearing. We hold the remaining portion of Finding of Fact 33 which states, “respondent parents lack the ability or willingness to establish a safe home for the juvenile[,]” is better labeled an ultimate finding as it is a finding made only upon the support of other evidentiary findings reached through logical reasoning.

The first portion of Finding of Fact 33 is undoubtedly supported by the trial court’s unchallenged Findings of Fact 12 and 13 which state the following:

12. That a true certified copy of the Termination of Parental Rights Adjudication and Disposition Orders dated December 21, 2016 concerning [a child] . . . were collectively submitted and accepted into evidence as Exhibit A with no objection by any party.

13. That [the child] is a sibling of this juvenile and a child of respondent parents in this matter.

Still, we must determine whether the trial court’s other unchallenged findings of evidentiary fact support the second portion of Finding of Fact 33.

In its order, the trial court made the following relevant findings:

20. That three days after birth [Amy] was found in a home (where she had been born and there was no medical services), dehydrated and with an infectious disease. The juvenile was taken to the hospital by [DSS] and remained hospitalized for three weeks.

...

23. The respondent parents have made no attempts to contact [Amy] at least since the date of the filing of the [petition] except for two letters sent from jail by [Father].

24. That respondent parents have not engaged in visits or otherwise reached out to [Amy]—no gifts, phone calls, cards, etc.

25. That neither parent has entered into a case plan toward reunification with the juvenile.

These evidentiary findings provide support for the portion of the trial court's Finding of Fact 33 classified as an ultimate finding. Thus, the trial court made the required findings to support its conclusion that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(9).

Because the trial court made the required findings, it did not err in concluding grounds existed for terminating Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(9). Where, as here, we uphold the trial court's order as to the existence of grounds for termination under section 7B-1111(a)(9), we need not address Father's contentions regarding section 7B-1111(a)(1)-(3) or (a)(7). *See In re C.J.*, 373 N.C. at 263, 837 S.E.2d at 861.

III. Conclusion

IN RE: A.A.G.

Opinion of the Court

The trial court did not err in concluding grounds existed for termination of Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(9).

AFFIRMED.

Judge TYSON concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).