

SUPREME COURT OF NORTH CAROLINA

In re A.N.H.

2022-NCSC-47 · No. No. 123A21 · Decided May 6, 2022

SUMMARY

The Supreme Court of North Carolina reviewed a termination-of-parental-rights order based on neglect and failure to make reasonable progress. The court held that several findings were unsupported by clear, cogent, and convincing evidence and that the supported findings were insufficient to establish grounds for termination, remanding for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Earls, Justice
JURISDICTION	North Carolina
DECIDED	May 6, 2022
DOCKET	No. 123A21
DISPOSITION	vacated
PROCEDURAL POSTURE	Respondent-father appealed as of right from an order terminating his parental rights under N.C.G.S. § 7B-1111(a)(1) and (2).
STANDARD OF REVIEW	The Supreme Court determines whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the conclusions of law. Unchallenged findings supported by competent evidence are binding on appeal, and conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of North Carolina
PARTIES	Respondent-father v. Henderson County Department of Social Services, Guardian ad Litem

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court's supported findings established a likelihood of future neglect sufficient to terminate respondent-father's parental rights under N.C.G.S. § 7B-1111(a)(1).
2. Whether the trial court's supported findings established that respondent-father willfully failed to make reasonable progress in correcting the conditions leading to the juvenile's removal under N.C.G.S. § 7B-1111(a)(2).
3. Whether challenged findings concerning respondent's disclosures to substance-abuse assessors, child-support arrears, visitation-based caregiving ability, housing efforts, therapy, and PPAT meetings were supported by the evidence.

HOLDINGS

1. The trial court's findings that respondent denied illegal substance use to assessors, failed to provide truthful and accurate information, was in child-support arrears, failed to demonstrate the ability to provide appropriate care, failed to seek housing assistance, failed to complete individual therapy, and failed to attend PPAT meetings were unsupported by the evidence and had to be disregarded. The finding that respondent failed to complete intensive outpatient treatment was supported only to the extent that the record showed he had been recommended for and did not complete that treatment, not that the recommendation necessarily came from a particular CCA.
2. The supported findings did not establish a likelihood that A.N.H. would be neglected if returned to respondent-father's care, because they did not show that his drug use would result in a physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment. The findings were therefore insufficient to support termination on the ground of neglect.
3. The supported findings did not establish that respondent-father willfully failed to make reasonable progress toward correcting the conditions that led to A.N.H.'s removal. His positive drug screens and incomplete treatment, considered with his substantial compliance with the remainder of the case plan, were insufficient on the findings left standing to support termination under the statute.
4. When factual findings are insufficient to support termination and it is uncertain whether the erroneous findings were central or incidental to the trial court's resolution of fact-intensive statutory questions, the appropriate disposition is to vacate and remand for further proceedings rather than reverse and remand for dismissal.

KEY QUOTATIONS

"We conclude that the findings of fact supported by clear, cogent, and convincing evidence in the record are insufficient to support the trial court's conclusion that respondent's parental rights in Annie were subject to termination." (§ 2)

"In order for a respondent's noncompliance with a case plan to support termination of parental rights, there must be a nexus between the components of the court-approved case plan allegedly not met and the conditions

which led to the child’s removal from the home.” (¶ 17)

“There are no findings to support the conclusion that respondent’s drug use will result in “some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment” (¶ 41)

“Therefore, we hold that the trial court’s findings of fact are insufficient to support its determination that respondent’s parental rights in Annie were subject to termination on the grounds of neglect and failure to make reasonable progress in correcting the conditions that led to her removal from his custody.” (¶ 43)

FACTUAL BACKGROUND

A.N.H. was born with cocaine exposure and experienced suboxone withdrawal; she was later removed from her mother's care and adjudicated neglected. Respondent-father established paternity and was ordered to complete a case plan addressing substance abuse, mental health, parenting, domestic violence, visitation, housing, employment, and support. He completed most requirements, including substance-abuse treatment, parenting and domestic-violence programs, child-support payments, and nearly all visits, but had several positive drug screens and failed to submit to some requested screens. The trial court terminated his parental rights based on neglect and failure to make reasonable progress, relying in part on findings that the Supreme Court held were unsupported by the evidence.

PROCEDURAL HISTORY

Henderson County Department of Social Services obtained nonsecure custody of A.N.H. and the juvenile was adjudicated neglected based on stipulated facts. The district court approved a reunification case plan for respondent-father, later changed the permanent plan to adoption, and entered an order terminating his parental rights after finding neglect and willful failure to make reasonable progress. The Supreme Court reviewed the adjudicatory findings and conclusions and vacated the termination order, remanding for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the termination order and remand to the District Court, Henderson County, for further proceedings consistent with the opinion. The trial court may, in its discretion, receive additional evidence.

CASES CITED

- In re E.H.P., 372 N.C. 388, 392 (2019)
- In re R.G.L., 2021-NCSC-155, ¶ 12
- In re T.N.H., 372 N.C. 403, 407 (2019)
- Koufman v. Koufman, 330 N.C. 93, 97 (1991)
- In re C.B.C., 373 N.C. 16, 19 (2019)
- In re R.L.D., 375 N.C. 838, 841 (2020)

- In re B.O.A., 372 N.C. 372, 387 (2019)
- In re J.S., 374 N.C. 811, 819 (2020)
- In re N.P., 374 N.C. 61, 65 (2020)
- In re Z.G.J., 378 N.C. 500, 2021-NCSC-102, ¶ 28
- In re Z.J.W., 2021-NCSC-13, ¶ 17
- In re S.M., 375 N.C. 673, 691 (2020)
- In re M.A., 374 N.C. 865, 870 (2020)
- In re M.J.S.M., 257 N.C. App. 633, 637 (2018)
- In re J.J.H., 376 N.C. 161, 185 (2020)
- In re D.W.P., 373 N.C. 327, 339-40 (2020)
- In re Y.Y.E.T., 205 N.C. App. 120, 131, disc. review denied, 364 N.C. 434 (2010)
- In re Stumbo, 357 N.C. 279, 283 (2003)
- In re K.B., 378 N.C. 601, 2021-NCSC-108, ¶ 22
- In re J.M., 373 N.C. 352, 356 (2020)
- In re N.D.A., 373 N.C. 71, 84 (2019)
- In re T.M.H., 186 N.C. App. 451, 456 (2007)
- In re K.L.T., 374 N.C. 826, 843 (2020)