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NO. COA10-857

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN RE:	Randolph County
S.L.R., Jr.,	Nos. 08 JT 94
A.D.R.,	08 JT 95
Minor Children.	

Appeal by respondents from judgments entered 19 May 2010 by Judge Michael A. Sabiston in Randolph County District Court. Heard in the Court of Appeals 30 November 2010.

*Erica Glass McDoe for petitioner-appellee.*

*Mercedes O. Chut for respondent-appellant father.*

*J. Thomas Diepenbrock for respondent-appellant mother.*

*Pamela Newell for guardian ad litem.*

HUNTER, Robert C., Judge.

Respondents-parents appeal from the trial court's termination of their parental rights with respect to their two children A.D.R. ("Amy") and S.L.R., Jr. ("Sam").<sup>1</sup> After careful review, we affirm.

#### Facts

Respondents are the parents of Amy, born in November 2005, and Sam, born in September 2007. The Randolph County Department of Social Services ("DSS") filed juvenile petitions on 4 June 2008

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<sup>1</sup>Pseudonyms are used throughout this opinion to protect the juveniles' privacy and for ease of reading.

alleging that the children were neglected. On 30 July 2008, with the consent of the parties, the court adjudicated the children as neglected based upon three primary facts: (1) the immunizations of the children were not current as of the filing of the petitions; (2) Amy's teeth were rotten; and (3) respondent-mother was homeless. On 3 December 2008 the court ordered that reunification efforts with respondent-father cease. Approximately one year later, on 2 December 2009, the court ordered cessation of reunification efforts with respondent-mother and changed the permanent plan to adoption. On 15 February 2010, DSS filed motions to terminate respondents' parental rights. On 19 May 2010, the court entered judgments terminating respondents' parental rights on the ground they neglected the children. Respondents timely appealed to this Court.

#### Standard of Review

Under our Juvenile Code, a termination of parental rights proceeding involves two distinct phases: an adjudicatory stage governed by N.C. Gen. Stat. § 7B-1109 (2009) and a dispositional stage governed by N.C. Gen. Stat. § 7B-1110 (2009). *In re Fletcher*, 148 N.C. App. 228, 233, 558 S.E.2d 498, 501 (2002). In the adjudicatory stage, the trial court must determine whether the evidence clearly and convincingly establishes at least one ground for the termination of parental rights listed in N.C. Gen. Stat. § 7B-1111 (2009). *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). After the petitioner has proven at least one ground for termination, the trial court proceeds to the

dispositional phase in which it "consider[s] whether termination is in the best interests of the child." *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003). The standard of review in termination of parental rights cases is whether the trial court's findings of fact are based upon clear, cogent, and convincing evidence and whether the court's findings, in turn, support its conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

I

Respondents contend that the trial court's conclusion of neglect is unsupported by its findings of fact and the evidence in the record. Under N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights if it determines that "[t]he parent has abused or neglected the juvenile." A "neglected juvenile" is defined as:

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. . . .

N.C. Gen. Stat. § 7B-101(15) (2009).

"In deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child 'at the time of the termination proceeding.'" *In re L.O.K.*, 174 N.C. App. 426, 435,

621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). "[A] prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *Ballard*, 311 N.C. at 713-14, 319 S.E.2d at 231. Termination may not, however, be based solely on past conditions that no longer exist. *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). Nevertheless, when, as here, the children have not been in the custody of the parents for a significant period of time prior to the termination hearing, "requiring the petitioner in such circumstances to show that the child[ren] [are] currently neglected by the parent[s] would make termination of parental rights impossible." *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407. In these circumstances, a trial court may determine that grounds for termination exist upon a showing of a "history of neglect by the parent and the probability of a repetition of neglect." *Id.*

Respondents maintain that the evidence in the record and the trial court's findings based on that evidence are insufficient to show their respective neglect of the children at the time of the termination hearing and a probability of repetition of neglect. "Where the evidence shows that a parent has failed or is unable to adequately provide for his child's physical and economic needs, whether it be by reason of mental infirmity or by reason of willful conduct on the part of the parent, and it appears that the parent will not or is not able to correct those inadequate conditions

within a reasonable time, the court may appropriately conclude that the child is neglected." *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984). In determining whether grounds exist to terminate a parent's rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), "the trial court must admit and consider all evidence of relevant circumstances or events which existed or occurred before the adjudication of abuse [or neglect], as well as any evidence of changed conditions in light of the evidence of prior abuse [or neglect] and the probability of a repetition of that abuse [or neglect]." *In re Greene*, 152 N.C. App. 410, 417, 568 S.E.2d 634, 638 (2002) (citations omitted).

With respect to respondent-father, the court concluded that he had neglected the children based upon findings of fact indicating he failed to: (1) maintain stable employment, having been in and out of jail since 4 June 2008 and having failed to produce any documentation of employment; (2) complete a substance abuse assessment ordered by the court on 30 July 2008; (3) submit to any of the four random drug screens requested by DSS, ranging in dates from 13 October 2009 to 9 March 2010; (4) complete court-ordered parenting classes; (5) complete court-ordered domestic violence classes; (6) complete court-ordered anger management treatment; and (7) pay a reasonable portion of support for the children during the 12 months preceding the filing of the motion to terminate respondent-father's parental rights.

More specifically, the court found that although respondent-father claimed in open court at a hearing on 7 December 2009 to be

employed by Saunders Construction Company, he failed to provide any written documentation to verify employment with this company, and the telephone number he provided for this company turned out to be the telephone number of a residence where respondent-mother was staying. Respondent-father never provided the social worker with any information regarding employment after his last release from incarceration on 27 July 2009. Respondent-father tested positive for marijuana on 29 July 2009 and he admitted to the social worker on 13 October 2009 that he smoked marijuana. Although respondent-father completed a "parenting accountability class" while he was incarcerated in the North Carolina Department of Correction, he never supplied to DSS a curriculum for the class. Respondent-father failed to present any documentation to the social worker that he completed any domestic violence counseling or anger management treatment. DSS spent \$9,171.39 per child for room, board, and clothing for the children while they have been in DSS' custody and respondent-father has not paid any amount to DSS for the cost of this care. Respondent-father did not attend the termination hearing although he was properly served with notice of the hearing.

With regard to respondent-mother, the court concluded that she neglected the children based upon findings indicating that she: (1) continued to neglect the children's dental health during a trial home placement; (2) failed to comply with the children's therapy by failing to appear for a number of appointments; (3) allowed Amy to suffer injuries during the trial placement; (4) continued to test

positive for illegal substances or prescription drugs without presenting evidence of a valid prescription; (5) refused to submit to drug screens requested by DSS; (6) failed to comply with a substance abuse assessment ordered by the court on 2 December 2009 after she continued to present positive drug screens; and (7) failed to complete court-ordered treatment for substance abuse and grief counseling after the death of her father.

In more detail, the findings show that during a home visit on 17 February 2009 while the children were back in the home of respondent-mother for a trial placement, the social worker advised her that for better dental health the children should only be given water or milk or 100% fruit juice diluted by 50% water, not Mountain Dew or Hawaiian Punch. During a visit one month later, on 17 March 2009, the social worker observed respondent-mother give a child Mountain Dew to drink. The social worker repeated her advice to respondent mother that the children should drink only water, milk, or diluted fruit juice. During another visit, the child tried to get respondent-mother's Mountain Dew to drink and respondent-mother responded by giving the child Hawaiian Punch. On 26 June 2009, the social worker directed respondent-mother to make a dental appointment for Sam because he had visible tooth decay. She also directed respondent-mother to make a dental appointment for Amy, which she never did. Respondent-mother failed to keep scheduled dental appointments for Sam on 17 August 2009 and 25 August 2009. When Sam was seen by a dentist on 26 August 2009, the dentist recommended extraction of three of his front teeth due to

decay. After both children were returned to foster care on 7 October 2009, four of Sam's teeth were extracted due to decay and a cavity in one of Amy's teeth was filled.

The social worker referred respondent-mother to Therapeutic Alternatives for the purpose of providing therapy to the children. Therapeutic Alternatives unsuccessfully attempted to contact respondent-mother on 23 March 2009, 25 March 2009, and 30 March 2009. Respondent-mother rescheduled several therapy appointments between 24 June 2009 and 10 July 2009. Therapy appointments were kept on 14 July 2009 and 21 July 2009 but appointments scheduled on 4 August 2009 and 27 August 2009 were not kept or rescheduled by respondent-mother.

On 17 November 2008, during the trial placement with respondent-mother, Sam suffered significant bruises on his sides while playing in his car seat. On 8 December 2008, Sam burned his arm on a heater. On 22 June 2009, he had sunburns on his right shoulder and in his hair line. Respondent-mother applied bug spray containing SPF on the burns.

Respondent-mother completed a substance abuse assessment on 9 December 2008. She initiated recommended intensive outpatient treatment in February 2009 but stopped attending treatment sessions in July 2009. Subsequent to the assessment and while attending treatment sessions, respondent-mother continued to test positive, on more than 20 separate dates ranging from 4 June 2008 to 12 January 2010, for the presence of controlled substances, including opiates, benzodiazepines, and barbituates, obtained without a



prescription. She refused to submit to random drug screens on 25 July 2008, 13 October 2009, 25 February 2010, and 9 March 2010. The court ordered respondent-mother on 7 October 2009 and 2 December 2009 to complete another substance abuse assessment. Respondent-mother never completed the assessment and never completed treatment.

Respondents do not challenge the sufficiency of the evidence to support these findings, and, therefore, they are considered binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). This Court has held that a parent's failure to make a substantial change in the conditions that led to the removal of a child from the parent's home suggests "a strong probability of a repetition" of the behavior that resulted in the removal of the child, and is sufficient to support termination of parental rights upon the ground of the original juvenile adjudication of abuse or neglect. *Greene*, 152 N.C. App. at 418, 568 S.E.2d at 639. In addition, a parent's failure to address the special needs of a child or to make advancements in addressing substance abuse issues is "clear, cogent, and convincing evidence of neglect and the probability of its repetition at the time of the termination proceeding to support the order terminating . . . parental rights." *In re Leftwich*, 135 N.C. App. 67, 73, 518 S.E.2d 799, 803 (1999).

The court, in this case, explicitly found that there is a likelihood of repetition of neglect if the children were returned to their parents. The court's findings indicate that respondent-father has abandoned any efforts to provide for the physical and

economic needs of his children. The findings also demonstrate that respondent-mother continues to engage in the same behaviors that led to the removal of the children from her home. She continues to be inattentive to the children's health needs and her own substance abuse issues. Accordingly, we hold that the court's findings of fact support its conclusion of law that grounds exist to terminate respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a) (1).

## II

Respondent-mother also contends that the trial court abused its discretion under N.C. Gen. Stat. § 7B-1110 by concluding that it was in the children's best interest to terminate her parental rights. Once one or more grounds for termination have been established, the court must determine whether termination is in the best interest of the child. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. This decision is within the discretion of the trial court and may be reviewed only for an abuse of discretion. *Shermer*, 156 N.C. App. at 285, 576 S.E.2d at 406-07. "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

The Juvenile Code enumerates several factors the trial court must consider in determining whether termination of parental rights is in the best interest of the child:

- (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)(1)-(6).

Respondent-mother argues that "[t]he trial court abused its discretion by failing to properly consider the criteria set forth in Section 7B-1110(a)." Respondent-mother points to the fact that, although the court made findings concerning the other factors enumerated in the statute, it failed to make any finding showing that it considered the "strong bond between [respondent-mother] and her children." In *In re S.C.H.*, \_\_ N.C. App. \_\_, \_\_, 682 S.E.2d 469, 475 (2009), *aff'd per curiam*, \_\_ N.C. \_\_, 689 S.E.2d 858 (2010), this Court held that the failure of the trial court to make a finding as to the bond between a parent and child is not fatal if the court makes findings as to the remaining factors and the findings are sufficient to permit this Court to determine whether the trial court abused its discretion.

Here, the trial court's findings show that the children are thriving in the foster home; that the children have adjusted well to the foster home; that their special needs with respect to their

medical care, speech therapy, and dental hygiene are being met by the foster parents; that health issues the children experienced while in the care of respondent-mother have abated since they have been in the foster home; that adoption is the permanent plan; and that the foster parents desire to adopt the children. These findings evince a reasoned decision by the trial court. We find no abuse of discretion.

Affirmed.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).