

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-748

Filed: 15 December 2015

Macon County, No. 12 JT 2

IN THE MATTER OF: J.I.M.

Appeal by respondent-mother from orders entered 20 March 2015 by Judge Monica Leslie and 17 April 2015 by Judge Jerry Waddell in Macon County District Court. Heard in the Court of Appeals 23 November 2015.

Elizabeth Myrick Boone for petitioner-appellee Macon County Department of Social Services.

Ellis & Winters LLP, by Lenor Marquis Segal for guardian ad litem.

Robert W. Ewing for respondent-appellant mother.

INMAN, Judge.

Respondent appeals from district court orders terminating her parental rights to her teenage son “John.”¹ We affirm.

I. Background

The Macon County Department of Social Services (DSS) became involved with respondent in September of 2011 after it received a report that John’s older sister suffered a black eye due to respondent’s use of improper discipline. Respondent

¹ A pseudonym is used to protect the privacy of the juvenile.

entered into a safety plan and a placement agreement. By order entered on 18 January 2012, DSS took nonsecure custody of twelve-year-old John and his sister, and filed petitions alleging that the juveniles were neglected and dependent. DSS alleged that respondent inappropriately disciplined John and his sister, that respondent was twice committed to a psychiatric facility after the voluntary kinship placement of the children, and that respondent's medical records from November 2011 indicated there was marijuana, methamphetamine, amphetamine, and opiates in her blood and urine. The petitions also alleged that during a December 2011 supervised visitation, respondent argued with John and his sister, reducing them to tears, and requiring DSS to end the visit.

By order filed 11 May 2012, the trial court adjudicated John and his sister to be neglected based upon respondent's inappropriate discipline of her children, her history of substance abuse, and her mental health issues. In a separate disposition order, the court continued custody of the juveniles with DSS and directed respondent to have supervised visitation. The court ordered respondent to: complete an anger management program to enable her to communicate and care for her children "without becoming angry, verbally and or physically abusive with them, and be able to articulate and or demonstrate what was learned in said classes[;]" complete a substance abuse program to address the effects of her drug use on the children; complete a parent education class and be able to "demonstrate and or articulate what

was learned in said classes[;]” and participate in family counseling, “which will enable her to build a more positive relationship with [her children].” The court also ordered respondent to maintain weekly contact with DSS, remain under the care of a mental health provider, remain drug free, and obtain a stable source of income.

Following a permanency planning hearing in December 2012, the trial court entered an order ceasing reunification efforts and changing the permanent plan for the juveniles to guardianship. Respondent appealed and this Court affirmed the trial court’s order. *In re D.F.S.*, ___ N.C. App. ___, 757 S.E.2d 526 (2014).

DSS subsequently filed a petition to terminate respondent’s parental rights to John.² By order filed 20 March 2015, the court concluded grounds existed to terminate respondent’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), and (a)(2) (willful failure to make reasonable progress). In a separate order, the court concluded it was in John’s best interest to terminate respondent’s parental rights.³ Respondent appeals.

II. Standard of Review

When reviewing a termination of parental rights case, we consider whether the findings of fact are “supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on

² DSS did not file a petition to terminate parental rights as to the sister.

³ The trial court also terminated the parental rights of John’s father who does not appeal.

the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.” *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (citation and internal quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). “Findings of fact to which a respondent did not object are conclusive on appeal.” *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted).

III. Grounds for Termination

Respondent contends the trial court erred in concluding that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 1111(a)(1).

A trial court may terminate parental rights based on a finding that the parent has neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2013). A neglected juvenile is one who “does not receive proper care, supervision, or discipline” from a parent or caretaker, or “who lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2013). Generally, “[a] finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding.” *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997) (citation omitted). Where, as here, a child has been removed from the parent’s custody before the termination hearing and the petitioner presents evidence of prior neglect, then “[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition

of neglect.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). Additionally, the determination of whether a child is neglected “must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

Here, it is undisputed that John was previously adjudicated a neglected juvenile. However, respondent argues the trial court erred in concluding that this neglect likely would be repeated if John were returned to her custody because she “made improvements to her life[.]”

The trial court made the following relevant findings of fact to support its conclusion that the termination of respondent’s parental rights was appropriate based on neglect:

23. At an Adjudication hearing on April 9, 2012 the juvenile was adjudicated by District Court Judge Roy Wijewickrama to be a neglected child based upon the Respondent [m]other’s mental health issues, substance abuse issues, and ongoing neglect of the children.

. . . .

39. That on June 11, 2013, [John] was present when an issue arose between juvenile’s [sister], and the Respondent [m]other at a park. Respondent [m]other wanted to leave the visit, due to a disagreement with Social Worker Stacy Jenkins. [The sister] asked the Respondent mother not to leave and became distraught, devolving into [the sister] having a panic attack.

40. The Respondent mother left the park, but returned a short time later. [John] blamed the Respondent mother for causing [his sister] to have a panic attack.

41. Respondent [m]other said to [John], "You'd better never say that to me again." Because the situation was escalating, Social Worker Jenkins ended the visit.

42. Family therapy that the juveniles and Respondent mother were participating in was not progressing and the inappropriate June 11, 2013 visit caused the therapist to terminate family therapy.

43. In February of 2014 at a permanency planning hearing, visitation changed to alternating weeks due to [John] joining the JV football team.

44. During this timeframe, good visits between Respondent mother and [John] would consist of eating food, playing cards, and talking.

45. Bad visits would consist of Respondent mother becoming angry when [John] referred to his foster mother as mom, the Respondent mother not agreeing to return personal belongings to juvenile, and the Respondent mother questioning his dedication to prayer and reading the Bible.

. . . .

52. Ms. Shields-Holmes had diagnosed [John] with Adjustment Disorder with Mixed Anxiety and Depression.

53. That in Ms. Shields-Holmes professional opinion these mental health issues stem from the stressor of abuse and neglect from Respondent mother.

54. That this stressor is ongoing due to continued negative exposure and contact with the Respondent mother.

. . . .

71. That the Respondent [m]other did complete items on her case plan, but did not ever achieve the main goal of the plan to repair the relationship with this juvenile despite the Department making numerous efforts including family therapy and frequent visitation.

72. That the relationship never improved beyond supervised visitations.

73. That juvenile to this date is still afraid of being alone with his mother.

74. That the Respondent mother was never able to prove to the satisfaction of the court, the juvenile, the Department, nor the GAL, that she resolved her issues to the point where she could have unsupervised visits with her child.

. . . .

77. The Respondent [p]arents have not corrected the conditions that led to the removal of the child from the home on January 3, 2012, in that the Respondent parents have failed to demonstrate that they can provide a safe and appropriate home for the minor child.

78. For a period in excess of 1284 days, the [p]arents have not successfully complied with the Case Plans of the Department of Social Services and the Orders of the Courts designed to achieve Reunification with the child, and have failed to alleviate those concerns raised by the Department of Social Services and the Court to demonstrate an ability today to provide a safe and permanent home for the minor child and an ability to provide proper care and supervision for the child.

Respondent does not challenge the above findings of fact, and they are therefore binding on appeal. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426

(2003) (“Findings of fact to which a respondent did not object are conclusive on appeal.”).

Respondent argues that because she complied with her case plan, she addressed the conditions which led to John’s removal and, therefore, there is no likelihood of future neglect. We disagree.

The trial court’s findings of fact show that although respondent completed parenting classes, participated in individual counseling, and attended anger management classes, she was unable to demonstrate what she learned. Specifically, respondent was unable to communicate with her children “without becoming angry” and unable to “build a positive relationship with her children.” Indeed, family counseling was discontinued due to respondent’s verbally abusive behavior towards John and his sister. These findings support the trial court’s determination that respondent neglected John and that there is a reasonable probability that John will be neglected if respondent is responsible for John’s care in the future. We hold the trial court properly concluded that respondent’s parental rights were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(1). Our determination that there is at least one ground to support a conclusion that parental rights should be terminated makes it unnecessary to address the remaining grounds. *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003).

IV. Conclusion

IN RE: J.I.M.

Opinion of the Court

Accordingly, the trial court's orders terminating respondent's parental rights are affirmed.

AFFIRMED.

Judges MCCULLOUGH and ZACHARY concur.

Report per Rule 30(e).