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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-118

Filed: 18 July 2017

Iredell County, Nos. 15 JT 184-85

IN THE MATTER OF: A.H., S.H.

Appeal by respondent-father and respondent-mother from order entered 1 November 2016 by Judge Christine Underwood in Iredell County District Court. Heard in the Court of Appeals 7 June 2017.

*Lauren Vaughan for petitioner-appellee Iredell County Department of Social Services.*

*Julie C. Boyer for respondent-appellant father.*

*Jeffrey William Gillette for respondent-appellant mother.*

*Melanie Stewart Cranford for guardian ad litem.*

DIETZ, Judge.

Respondents appeal from an order terminating their parental rights to their children, Alex and Stephanie.<sup>1</sup> As explained below, Respondents' failure to seek medical attention for severe and obvious injuries to two-month-old Stephanie (such

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<sup>1</sup> We use pseudonyms to protect the children's identities.

as broken bones, burns, and skin conditions resulting from malnutrition) and Respondents' failure to make progress on the conditions that led to this neglect, support the trial court's findings, which in turn support the court's conclusion to terminate Respondents' parental rights based on neglect. Accordingly, we affirm the trial court's termination order.

### **Facts and Procedural History**

On 2 October 2015, Iredell County Department of Social Services obtained non-secure custody of Alex and Stephanie after filing petitions alleging abuse and neglect.

Several weeks earlier, Respondents arrived at a hospital emergency room with their two-month-old daughter Stephanie. Stephanie was severely malnourished and suffering from multiple broken bones, bruises, a burn on her lip, serious diaper rash, skin breakdown, and pressure ulcers. Stephanie had to be transferred to Wake Forest Baptist Medical Center to be treated by specialists.

Respondent-father testified that the burn on Stephanie's lip was the result of a bottle he heated and failed to cool. Both Respondents admitted to watering-down Stephanie's formula, which contributed to her malnutrition. Respondent-father also admitted that he picked up Stephanie with excess force on multiple occasions, which may have caused her broken bones. Both parents were charged with felony child abuse and inflicting serious bodily injury.

After DSS took custody of the children, Respondents did not make any significant progress in addressing the conditions that led to the neglect. Respondent-father continued to have violence and anger issues and Respondent-mother entered into relationships with men who were abusive or had a history of sexual misconduct with juveniles.

DSS ultimately petitioned to terminate Respondents' parental rights. After hearing evidence over five days, the trial court adjudicated Alex and Stephanie as abused and neglected juveniles. On 1 November 2016, the trial court entered a written order terminating Respondents' parental rights. Respondents each timely appealed.

### **Analysis**

Respondents challenge the trial court's order terminating their parental rights. As explained below, the trial court's findings are supported by the record and those findings, in turn, support the court's termination of Respondents' parental rights.

This Court reviews the trial court's order terminating parental rights to determine whether the court's findings of fact are supported by clear, cogent, and convincing evidence, and whether those findings support the trial court's conclusions of law. *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000); *In re Smith*,

146 N.C. App. 302, 304, 552 S.E.2d 184, 186 (2001). Unchallenged findings of fact are binding on appeal. *In re Caldwell*, 75 N.C. App. 299, 301, 330 S.E.2d 513, 515 (1985).

We first address termination based on neglect. A neglected juvenile is defined by statute 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 . . . . In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2015).

When a child already has been placed outside the parent's custody, the trial court must consider "any evidence of changed conditions after the child was removed from parental custody in light of evidence of prior neglect and the probability of a repetition of neglect." *In re McDonald*, 72 N.C. App. 234, 240, 324 S.E.2d 847, 851 (1984).

Respondents first contend that there was no proof that they *caused* Stephanie's serious injuries. We reject this argument because "[i]n determining whether a child is neglected, the determinative factors are the circumstances and

conditions surrounding the child, not the fault or culpability of the parent.” *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 252 (1984).

Respondents next challenge the court’s finding that Stephanie’s condition was “horrifying” and “that a lay person would have been able to discern that something was seriously wrong with this child.” Again, we reject Respondents’ argument. To be sure, a medical doctor testified that some of the bone fractures could be ascertained only through an x-ray or other professional equipment. But that same doctor testified that, given the extent of Stephanie’s injuries, any lay person would be able to tell that something was seriously wrong with her. Indeed, both Respondents testified that they knew something was wrong with Stephanie. Her injuries were indeed severe: Stephanie was dangerously malnourished, had six broken bones, bruising on her face, a burn on her lip, and skin breakdown (as a result of malnourishment) that caused painful pressure ulcers.

In short, given the seriousness of Stephanie’s injuries and the medical testimony, the trial court’s finding that Stephanie’s condition was “horrifying,” and that a lay person would have known something was wrong, was supported by clear, cogent, and convincing evidence. *See In re S.W.*, 187 N.C. App. 505, 507-08, 653 S.E.2d 425, 426 (2007).

Finally, Respondents challenge the trial court's findings concerning the likelihood of future neglect. Again, we reject this argument because the trial court's findings are supported by the record.

We first address the facts concerning Respondent-father. While on pre-trial release (for felony child abuse), Respondent-father assaulted Respondent-mother and was charged with felony assault by strangulation. Respondent-father did not enroll in parenting classes; did not receive a domestic violence or mental health assessment; did not request to enter into a case plan with DSS; and did not contact DSS or the guardian ad litem to ask about the children after DSS filed the petition. Moreover, Respondent-father has ongoing anger issues that, based on the record, have not improved since DSS took custody of the children. Similarly, Respondent-father did not provide a sufficient explanation for how he planned to correct the conditions that caused the neglect and he failed to adequately take responsibility for his actions. Thus, we hold that the trial court's findings on this issue were supported by clear, cogent, and convincing evidence.

We next address the facts concerning Respondent-mother. After Respondent-mother's guilty plea to felony child abuse, she began romantic relationships with a man facing charges for statutory rape and another who is a registered sex offender with a child victim. At least one man with whom she is romantically involved is physically abusing her.

Respondent-mother argues that the trial court failed to consider the effects of her “youthful inexperience” and history as a victim of domestic abuse in its findings. But, as discussed above, the issue is not whether Respondent-mother can be blamed for her abusive boyfriend’s conduct (she cannot), but whether her children were neglected and whether that neglect likely will recur in the future. Thus, the trial court properly found that, given Respondent-mother’s present abusive relationship and her failure to seek counseling or the assistance of law enforcement or the courts, there was a likelihood of future neglect if the children were returned to her custody. *See In re J.W.*, 241 N.C. App. 44, 50, 772 S.E.2d 249, 254 (2015).

In sum, the trial court properly terminated Respondents’ parental rights based on neglect. N.C. Gen. Stat. § 7B-1111(a)(1). Because we uphold the termination on this ground, we need not address Respondents’ arguments concerning the alternative grounds for termination. *See In re A.L.*, \_\_ N.C. App. \_\_, \_\_, 781 S.E.2d 856, 860 (2016).

### **Conclusion**

We affirm the trial court’s order.

**AFFIRMED.**

Judges ELMORE and ARROWOOD concur.

Report per Rule 30(e).