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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-31

Filed: 18 July 2017

Montgomery County, Nos. 14JT11-12, 42

IN THE MATTER OF: I.N.S., L.A.S., W.M.S. III

Appeal by respondent-father from orders entered 17 October 2016 by Judge Scott C. Etheridge in Montgomery County District Court. Heard in the Court of Appeals 22 June 2017.

J. Kent Trull for petitioner-appellee Montgomery County Department of Social Services.

Rebekah W. Davis for respondent-appellant father.

Elon University Guardian ad Litem Appellate Advocacy Clinic, by Senior Associate Dean Alan D. Woodlief, Jr., for guardian ad litem.

BERGER, Judge.

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Respondent is the father of three children, I.N.S. (“Iris”), L.A.S. (“Laura”), and W.M.S. III (“Wes”).¹ He appeals from orders terminating his parental rights to all three children.² For reasons stated herein, we affirm the orders.

On March 17, 2014, Montgomery County Department of Social Services (“MCDSS”) filed juvenile petitions alleging that Iris, then seven months old, and Laura, then five years old, were abused and neglected juveniles. By order entered April 28, 2014, they were adjudicated as neglected juveniles and placed in the custody of MCDSS. The parties stipulated that the two juveniles were exposed to numerous acts of domestic violence in the home they shared with Respondent, Iris’ mother, and their paternal grandmother. Three days after Wes was born in August 2014, MCDSS filed a juvenile petition alleging that he was a neglected juvenile. Wes was adjudicated as a neglected juvenile by an order entered April 27, 2015. The parties stipulated in this order that Wes was born in a toilet at his parents’ home, and that at the time of his birth, criminal assault charges were pending against his mother and paternal grandmother, and multiple criminal charges were pending against Respondent.

On October 8, 2015, MCDSS filed motions to terminate the parental rights of the parents. The court held a hearing on July 25, 2016, and filed orders on October

¹ Pseudonyms are used throughout to protect the identity of the children pursuant to N.C.R. App. P. 3.1(b), and for ease of reading.

² The parental rights of the juveniles’ mothers were also terminated in these orders. The mothers have not appealed.

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17, 2016 terminating Respondent's parental rights. The findings of fact in the orders show, *inter alia*, that Respondent pleaded guilty to felony child abuse with infliction of serious bodily injury and sex offense in a parental role on September 21, 2015.

The court ultimately found and concluded that Respondent neglected the two girls by exposing them to "sustained acts of domestic violence over a substantial period of time" and by lacking insight "as to appropriate conduct to raise a child." The court found that Wes was neglected because Respondent failed to obtain prenatal care for the child and exposed Wes' siblings to domestic violence. The court further concluded with regard to all three children that the "probability of future neglect is high" because "the issues[,] which make the possibility of ongoing future neglect likely[,] have not been addressed" by Respondent. The court determined that termination of Respondent's parental rights is in the juveniles' best interests. Respondent appealed.

In termination of parental rights proceedings, the trial court "examines the evidence and determines whether sufficient grounds exist under N.C. Gen. Stat. § 7B-1111 to warrant termination of parental rights." *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736 (2004) (citation omitted), *aff'd*, 359 N.C. 405, 610 S.E.2d 199 (2005). The court must decide "whether the parent's individual conduct satisfies one or more of the statutory grounds which permit termination." *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007).

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We review a trial court's order terminating parental rights to determine "whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings . . . support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004) (citation and quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). We review conclusions of law *de novo*. *In re S.N., X.Z.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation omitted), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

Respondent first argues certain findings of fact are not supported by competent evidence because they are based upon prior orders, namely from permanency planning hearings, of which judicial notice was taken in the orders terminating parental rights, but not during the termination of rights hearing. Respondent submits that he should have had the opportunity to be heard on consideration of those orders.

Although the "better practice would be to explicitly give all parties notice by announcing in open court that it is taking judicial notice of the matters contained in the court file," the trial court " 'may take judicial notice of earlier proceedings in the same cause' " without the necessity of either party offering the file into evidence. *In re M.N.C.*, 176 N.C. App. 114, 120-21, 625 S.E.2d 627, 632 (2006) (citation omitted). Therefore, the trial court did not err in taking judicial notice in this matter.

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Respondent next contends the trial court erred by concluding that grounds existed to terminate his parental rights on the basis that he neglected the juveniles. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2015). A juvenile is neglected if he “does not receive proper care, supervision or discipline from [his] parent, . . . has been abandoned[,] . . . is not provided necessary medical care[] or . . . remedial care[,] or . . . lives in an environment injurious to [his] welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2016). “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). The court must consider evidence of any changed circumstances since the time of a prior adjudication and the likelihood of repetition of the neglect. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). When the child has not been in the parent’s custody, the 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).

Respondent argues the evidence and findings of fact fail to address conditions at the time of the termination hearing. We disagree. The findings of fact show that at the time of the termination hearing, Respondent was incarcerated and will be incarcerated for several years in the future. The findings further show that Respondent was involved in several incidents of domestic violence over an extended

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period of time, some in the presence of Laura and Iris. Respondent was diagnosed by a psychologist as having a mental health disorder likely to put the children at risk, and alcohol abuse. At the time of the termination hearing, Respondent had not completed domestic violence offender treatment as required by his case plans and prior orders of the court, and he had not completed any mental health treatment program. Respondent has not seen the juveniles since he was incarcerated in October 2014, and his last correspondence to the juveniles was nearly three years ago. These findings support a conclusion that Respondent neglected the juveniles and that, based upon Respondent's history and failure to complete remedial treatment programs, there is a high probability for repetition of neglect.

We, therefore, affirm the orders terminating Respondent's parental rights.

AFFIRMED.

Judges ELMORE and TYSON concur.

Report per Rule 30(e).