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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-452

Filed: 19 September 2017

New Hanover County, No. 15 JT 186

IN THE MATTER OF: S.M.C.

Appeal by Mother from order entered 8 February 2017 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 24 August 2017.

Regina Floyd-Davis for Petitioner-Appellee New Hanover County Department of Social Services.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for Respondent-Appellant Mother.

Battle, Winslow, Scott & Wiley, P.A., by M. Greg Crumpler, for Guardian ad Litem.

DILLON, Judge.

Mother appeals from an order terminating her parental rights to her child S.M.C. (“Sam”).¹ The father is not a party to this appeal. After careful consideration, we affirm.

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading.

I. Background

The New Hanover County Department of Social Services (“DSS”) first became involved with the family in January 2014 after Mother overdosed on heroin while alone with Sam. Sam, whom Mother was breastfeeding, was taken to a hospital for observation. After Mother went to an in-patient treatment program and completed out-patient services, DSS closed the case in October 2014. Mother relapsed shortly after the case was closed, and in April 2015 she reported she was using ten bags of intravenous heroin daily, along with cocaine and marijuana.

After a family assessment was conducted a decision was made to develop a family services agreement focused on Mother’s substance abuse and mental health issues. Despite being enrolled in a Methadone program, Mother continued to use heroin and cocaine.

In July 2015, DSS filed a petition, alleging that Sam was neglected and dependent. DSS obtained nonsecure custody the same day. Following a hearing, the trial court entered an order adjudicating Sam neglected and dependent. The trial court held three permanency planning hearings in 2016, which resulted in a final order establishing a primary permanent plan of adoption with a secondary plan of reunification.

In October 2016, DSS filed a petition for termination of parental rights, alleging as grounds that Mother neglected the juvenile and left the juvenile in

placement outside of the home for more than twelve months without showing reasonable progress in correcting the conditions that led to the removal of the juvenile. See N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2015). After a hearing on the petition in January 2017, the trial court entered an order terminating Mother's parental rights. Mother timely appealed from the termination order.

II. Analysis

On appeal, Mother contends that the trial court erred in finding that grounds existed to terminate her parental rights. We conclude that the trial court's unchallenged findings support its order to terminate Mother's parental rights on the basis of neglect.

"The standard for review in termination of parental rights cases is whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000) (internal marks and citation omitted).

N.C. Gen. Stat. § 7B-1111(a)(1) permits a trial court to terminate parental rights upon finding that the parent has neglected the juvenile. A neglected juvenile is, in part, one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15) (2015). "If there is no evidence of neglect at the time of the termination proceeding . . .

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parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000).

The trial court made the following findings regarding a past adjudication of neglect and the probability of a repetition of neglect if Sam were returned to Mother:

4. That [Sam] was adjudicated a dependent and neglected Juvenile within the meaning of G.S. 7B-101(9) and (15) at a hearing held on September 9, 2015. . . .

5. That three (3) months later at the ninety-day review hearing held on December 2, 201[5], [Mother] was non-compliant with the Order of the Court. She had not addressed her substance abuse issues; had not secured housing; had not submitted to requested drug screens; had not addressed her own health needs or visited with her son. However, in January of 2016, [Mother] had made some progress. She was re-engaged at Coastal Horizons, and was seeking full time employment. The permanent plan was established as a concurrent plan with the primary plan being adoption, due to [Mother’s] limited progress, with a secondary plan of reunification with [Mother].

6. That over the next eight months, [Mother] was inconsistent with reunification efforts. She completed a psychological evaluation, which recommended a residential treatment program and pharmacotherapy for depression and opiate use disorder, and individual therapy. [Mother] did not comply with said request. During said period, she did not maintain employment, and maintained appropriate, yet inconsistent visitation with her son. However, she did complete a parenting class.

. . . .

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8. That [Mother] has a long history of substance abuse, participation in treatment programs, and relapses. She acknowledges a ten to twelve-year history of Marijuana, Cocaine and Heroin use dating back to being 16 years of age. From 2014 through 2016, she has participated in the New Hanover County Drug Court Program, Black Mountain Treatment Program, the Helping Hand Treatment program, Coastal Horizons Treatment Program and the Intensive Preservation In-Home Counseling Program. Throughout said programs, [Mother] continued to test positive for Heroin and Cocaine. [DSS's] first child protective services' report was received in January of 2014, wherein [Mother] had overdosed on Heroin, requiring the use of Narcon to revive her. Prior to the overdose, she had breastfed [Sam]. . . .

9. That from August of 2015 through December of 2015, [Mother] did not maintain contact with the Department. She did not maintain visitation with her son. She participated in one Case Plan review; however, she did not show up for the other scheduled Case Plan review.

10. That [Mother] engaged in a new relationship with ["Milton"²]. [Mother] consistently denied being involved with [Milton]; however, later it was confirmed that she was pregnant by [Milton]. This Court directed that [Milton] enter into a Case Plan and comply with all recommendation[s]. To date, [Milton], with whom [Mother] is currently residing, has not entered a Case Plan with [DSS].

11. That five months subsequent to [Mother's] completion of the [Comprehensive Clinical Assessment] through Coastal Horizons, [Mother] had not participated in the recommended after care program. Although, therapy was recommended two time[s] per month, she had only attended two (2) sessions.

² A pseudonym.

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12. That [a] psychological evaluation . . . recommended residential in-patient treatment for [Mother]. She did not enroll in the same, but went to Walter B. Jones, after four (4) referrals, for approximately ten (10) days, which this Court does not view as similar treatment. Prior to entering Walter B. Jones, [Mother] admitted using Cocaine, Opioids, and Buprenorphine, and briefly initiated services at Port Human Services.

. . . .

14. That from August of 2015 through December of 2016, [Mother] no-showed for approximately twenty (20) requested drug screens. During the same period, [Mother] had numerous test positive (sic) for Subutex, which was sometimes prescribed, Cocaine and Heroin. . . . The most recent positive test for Cocaine was a hair screen from November of 2016.

15. That from March of 2016 through October of 2016, [Mother] denied being in a relationship with [Milton], despite having given birth to [Milton's son, "MJ"³]. . . . On this date, [Mother] acknowledges living in the home of [Milton's mother], whom she refers to as Mother-In-Law, with [Milton], [MJ], and another of [Milton's] sons. [Mother] is not employed at this time.

16. That on this date, [Mother] acknowledges that [Milton] has had substance abuse issues, with his drug of choice being Cocaine. . . .

17. That [Mother] and [Milton] have an open Child Protective Services case with Pender County Department of Social Services for [Mother's] youngest child, [MJ]. [Mother] is currently enrolled in substance abuse treatment at Coastal Horizons in Pender County, as part of her Pender County Case Plan. She is in compliance with

³ A pseudonym.

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the Pender County Department of Social Services' Case Plan according to the testimony of Social Worker Katy Bell; however, the current substance abuse treatment plan is not the same as recommended by the New Hanover County Case Plan.

18. That [Milton] tested positive for Cocaine through a hair follicle test in October of 2016.

19. That [Mother] ha[s] acted in a manner which demonstrates that [she] will not promote [her] child's health and safety or [his] physical and emotional well-being.

Mother challenges finding of fact 12, which she contends is not supported by clear and convincing evidence. We need not review this challenge because, even assuming the finding is unsupported, the remaining findings support the trial court's finding that grounds existed to terminate Mother's parental rights on the basis of neglect. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When . . . ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error." (citation omitted)). Mother does not challenge the remaining findings, and those findings are therefore binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.").

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To summarize the trial court's findings, DSS first became involved with Mother because she overdosed while caring for Sam. Mother had struggled for years with substance abuse, and despite periodically seeking treatment, never demonstrated the ability to remain sober. She did not show up for twenty requested drug screens and failed multiple drug screens during the pendency of this case. Mother did not comply with a request that she attend a residential treatment program and individual therapy, and she did not maintain employment. She did not consistently visit with her son or maintain contact with DSS. Mother lived with a man who also struggled with substance abuse and refused to admit her relationship with him. All of these findings support the trial court's determination that Sam would probably be neglected again were he returned to Mother's care.

Mother points to finding of fact 17 and argues that the trial court could not conclude that a repetition of neglect was probable given the court's acknowledgment that she was in compliance with her Pender County case plan. However, Mother fails to demonstrate how a case involving a different child, in a different county, and with a different procedural posture could limit the trial court's ability to independently reach a conclusion as to whether grounds existed to terminate Mother's parental rights in this case. While the trial court was free to consider Mother's compliance with a case plan in another county, that evidence in no way prevented the trial court

from finding grounds to terminate based on all the other evidence presented in the case.

Similarly, Mother contends:

In this case, two counties reached two opposite conclusions: Pender found no substantial risk of harm; New Hanover found a probability of a repetition of harm. As a matter of common sense, given these competing determinations from within the same judicial district, it simply cannot be said that New Hanover County presented clear and convincing evidence of a repetition of neglect.

Mother's argument asks us to assume that Pender County's determination of "no substantial risk of harm" was correct. However, that case is not subject to this Court's review, and we will not engage in assumptions as to its correctness. We are tasked only with determining whether the trial court's findings of fact in this case are based upon clear, cogent and convincing evidence, and whether the findings support the conclusions of law. As indicated above, we conclude that the trial court did not err in finding that grounds existed to terminate Mother's parental rights on the basis of neglect.

While Mother also challenges the trial court's finding that grounds existed to terminate under N.C. Gen. Stat. § 7B-1111(a)(2), we need not address that challenge given our decision to uphold the trial court's conclusion that Mother's parental rights were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(1). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one

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of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat.] § 7B-1111 is sufficient to support a termination.”). The trial court’s order terminating Mother’s parental rights is affirmed.

AFFIRMED.

Judges CALABRIA and DAVIS concur.

Report per Rule 30(e).