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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-380

Filed: 19 September 2017

Guilford County, No. 15 JT 222

IN THE MATTER OF: T.M.S.

Appeal by respondent-mother from order entered 13 January 2017 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 10 August 2017.

*Mercedes O. Chut, for petitioner-appellee Guilford County Department of Health and Human Services.*

*Parker Poe Adams & Bernstein, by Elizabeth Trenary, for guardian ad litem.*

*Anné C. Wright, for respondent-appellant mother.*

MURPHY, Judge.

Respondent-mother (“Irene”)<sup>1</sup> appeals from an order terminating her parental rights in the minor child (“Tyler”). Although the order also terminates the rights of Tyler’s father (“Jose”), he is not a party to this appeal. We affirm.

Background

Prior to Tyler’s birth in May 2015, Irene had a lengthy child protective services (“CPS”) history involving her four older children.

In April 2007, Irene’s son “Tony” was admitted to the hospital with a “concerning limp” amid reports of domestic violence and substance abuse in the home. The local department of social services (“DSS”)<sup>2</sup> recommended services for the family. Tony’s father was awarded custody of the child in October 2009.

Irene gave birth to “Timmy” in August 2010. The next day, DSS received a CPS report stating that Irene had a history of depression and suicidal ideations, and was homeless and mentally unstable. Subsequent reports stated, *inter alia*, that Irene had violated a safety agreement with DSS and was using cocaine. DSS filed a juvenile petition and obtained nonsecure custody of Timmy on 17 September 2010. Irene subsequently relinquished her parental rights to the child.

In June 2011, “Nina” was born at thirty-five weeks’ gestation. She weighed just four pounds and tested positive for cocaine. DSS filed a juvenile petition and

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<sup>1</sup> We use pseudonyms to protect the identity of the minor children. See N.C.R. App. P. 3.1(b).

<sup>2</sup> Guilford County Department of Social Services merged into the Guilford County Department of Health and Human Services in May 2014.

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took Nina into nonsecure custody. Irene later relinquished her parental rights to Nina.

In January 2014, DSS received a CPS report that Irene had given birth to “Tommy” while incarcerated in Guilford County Jail. The report advised that Irene had consistently tested positive for cocaine at her prenatal appointments. DSS filed a juvenile petition on 4 February 2015 and obtained nonsecure custody of the infant child. Irene’s parental rights to Tommy were terminated by order of the Guilford County District Court on 13 July 2015. At the time of the hearing, Irene was incarcerated for a probation violation of a drug-related conviction. The termination order detailed Irene’s failure to address her ongoing issues with mental illness and substance abuse; her refusal to submit to a parenting evaluation; her persistent unemployment and lack of stable housing; and her lengthy criminal history. The order noted that Irene had never been married and was currently incarcerated and pregnant with her fifth child.

Irene gave birth to Tyler in May 2015. The following day, the Guilford County Department of Health and Human Services (“GCDHHS”) received a CPS report stating that Irene and Tyler had tested positive for cocaine. Irene admitted to the social worker that she had used cocaine after being released from jail earlier in the month. She identified Tyler’s father as a man named “Ramon,” whose last name and contact information she did not know.

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The record reveals the following history prior to Tyler's birth. In March 2014, Irene was referred to complete a substance abuse assessment, but refused to submit to the assessment. Instead, Irene continued to use cocaine regularly and refused to submit to drug screens on two occasions before Tyler's birth. In October 2014, Irene was involuntarily admitted to the hospital, where she tested positive for cocaine and was diagnosed with cocaine abuse.

On 27 May 2015, GCDHHS obtained nonsecure custody of Tyler and filed a juvenile petition alleging neglect and dependency because Tyler did not receive proper care, supervision or discipline from Irene, lived in an environment injurious to his welfare, and that Irene was unable to provide for Tyler's care and lacked an appropriate alternative child care arrangement. At that time, both Irene and Tyler tested positive for cocaine. After a hearing on 20 January 2016, the trial court adjudicated Tyler a neglected and dependent juvenile by order entered 23 February 2016. The trial court held a combined dispositional and permanency planning hearing on 16 March 2016. In the resulting order, entered 11 April 2016, the trial court found that Irene had entered into a case plan with GCDHHS on 18 June 2015, but "is no longer working her case plan and continues to refuse drug screens. She is not participating in substance abuse treatment, [is] in partial compliance with her mental health treatment, and . . . remains unemployed and homeless." The trial court maintained Tyler in GCDHHS custody, established a primary permanent plan of

adoption and a secondary plan of reunification, and ordered GCDHHS to file for termination of parental rights within 60 days. Irene was ordered to “comply with her case plan and cooperate with [GCDHHS], should she wish to work towards reunification.”

GCDHHS filed a petition to terminate the parental rights of Irene and Jose on 6 June 2016. In July 2016, Irene gave birth to her sixth child, “Nora.” Both mother and daughter tested positive for cocaine. Nora was removed from Irene’s custody and was adjudicated a neglected and dependent juvenile on 26 October 2016.

Irene continued to struggle with substance abuse problems in the year and a half leading up to the Termination of Parental Rights Hearing. On twelve separate occasions between 4 June 2015 and 18 March 2016, Irene refused to submit to a drug screen. On two separate occasions, Irene was found guilty of open container of alcohol violations. On 19 July 2015, Irene completed a substance abuse assessment with a DSS counselor. The counselor recommended Irene complete residential treatment followed by supportive housing and intensive outpatient services.

However, Irene failed to complete any residential treatment programs. On 23 September 2015, Irene enrolled in Daymark Recovery Services for substance abuse treatment, but was discharged after a week because she became “hostile.” On 2 October 2015, Irene enrolled at Old Vineyard for substance abuse treatment, but left one day before she was due to complete the program. In April 2016, Irene admitted

to using cocaine and alcohol on a consistent basis. In May 2016, Irene was placed on the waitlist for several residential substance abuse facilities, and in June 2016, Irene began participating in weekly group substance abuse treatment.

On 28 September 2016, Irene tested positive for cocaine. The next day, Irene enrolled in an alcohol and drug treatment program, but left after a week without completing the program because she was concerned about leaving her home with her boyfriend, Mr. Lynn, living there. On 21 November and 28 November 2016, Irene produced clean drug screens. On 23 November 2016, Irene told the social worker that she still struggled with alcohol abuse, but “it was a lot better than the continued use of illegal substances such as cocaine.” On 23 November 2016, Mr. Lynn tested positive for marijuana.

At the hearing, Irene testified that she had been clean of cocaine use for one and a half months and clean of alcohol use for about two weeks.

After a hearing on 13 December 2016, the trial court entered an order terminating Irene’s parental rights to Tyler on 13 January 2017. The trial court found the following grounds for termination: (1) neglect; (2) failure to make reasonable progress to correct the conditions leading to Tyler’s removal; (3) failure to pay a reasonable portion of the cost of Tyler’s care; (4) dependency; and (5) inability to provide a safe home for Tyler after the involuntary termination of Irene’s parental rights to another child. N.C.G.S. § 7B-1111(a)(1)-(3), (6), (9) (2015). The trial court

then considered the dispositional factors in N.C.G.S. § 7B-1110(a) (2015) and determined that terminating Irene’s parental rights was in Tyler’s best interest. Irene filed timely notice of appeal.

Analysis

On appeal, Irene challenges each of the five grounds for termination of parental rights found by the trial court. We review an adjudication under subsection 7B-1111(a) to determine “whether the findings of fact are supported by clear, cogent and convincing evidence, and whether the findings support the [trial] court’s conclusions of law. If there is competent evidence, the findings of the trial court are binding on appeal.” *In re B.S.O.*, 234 N.C. App. 706, 707-08, 760 S.E.2d 59, 62 (2014) (quotations and citations omitted). We are likewise bound by any uncontested findings of fact. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The trial court’s conclusions of law are reviewed de novo. *In re B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62.

Under N.C.G.S. § 7B-1111(a)(1), the trial court may terminate parental rights if “[t]he parent has . . . neglected the juvenile.” The Juvenile Code defines “[n]eglected juvenile” as one who, *inter alia*, “does not receive proper care [or] supervision” from the juvenile’s parent or who “lives in an environment injurious to the juvenile’s welfare[.]” N.C.G.S. § 7B-101(15) (2015).

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To sustain an adjudication under N.C.G.S. § 7B-1111(a)(1), “[n]eglect must exist at the time of the termination hearing[.]” *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 729 (2007). An adjudication under N.C.G.S. § 7B-1111(a)(1) may be supported by “evidence of prior neglect and [of] the probability of a repetition of neglect if the child were returned to the parent’s care.” *In re A.B.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 799 S.E.2d 445, 449 (2017) (citation and quotation omitted). However, the trial court cannot rely on past neglect, but “must . . . consider any evidence of changed conditions” since the prior adjudication of neglect and “make an independent determination of whether neglect authorizing termination of the respondent’s parental rights existed at the time of the termination hearing.” *Matter of Ballard*, 311 N.C. 708, 715-716, 319 S.E.2d 227, 232-233 (1984). “[T]he decision of the trial court 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).

The trial court determined that Tyler “is currently neglected by [Irene] and there is a strong likelihood of repetition of neglect should the juvenile be returned to [her].” The trial court made the following evidentiary findings in support of its adjudication under N.C.G.S. § 7B-1111(a)(1):

- a. [Irene] has failed to maintain her sobriety for any significant duration. Per [her] testimony, she has refrained from the use of illegal substances for one-and-a-half months, and from alcohol for two weeks. She failed to

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consistently engage in the substance abuse treatment services afforded to her. [Irene] has participated in several substance abuse programs, however [she] has failed to complete any of the programs. She continued to use illegal substances regularly, even throughout her pregnancy with the juvenile [Nora]. [Irene] refused to cooperate with most drug screens throughout the case, and most recently tested positive for cocaine in September 2016. The Court notes that [she] has had only two negative drug screens at the end of November 2016.

b. [Irene] has made some progress with respect to her mental health issues, however, this compliance is recent. [She] was initially non-compliant with mental health services following the removal of the juvenile, and participated in no mental health services from November 2015 until April 2016. Following her suicide attempt in April 2016 (while pregnant with the juvenile [Nora]), [Irene] began services with Psychotherapeutic Services, Inc. in June 2016. [Her] medication management is strictly controlled through her ACT team, and she has not progressed to being responsible for administering her own mental health medication.

c. [Irene] does not have sufficient and stable income to meet the needs of herself or the juvenile. She has remained unemployed, and applied for disability, but her claim was denied. [She] is appealing that denial. [Irene] does have housing, but is continuing to reside with the father of her youngest child, Mr. Lynn, who has his own substance abuse issues.

d. [Irene] acknowledged in her testimony at this hearing that she is not ready to assume custody of the juvenile at this time. [Irene] has four other children older than [Tyler] who have been removed from her care. One juvenile was placed with a relative, [Irene] relinquished her parental rights as to two of those children, and her parental rights were involuntarily terminated as to a fourth. [Irene] has since had a sixth child, [Nora], who was born testing

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positive for cocaine, and was subsequently removed from [respondent-mother]. [Nora] remains in the custody of the Department . . . .

e. [Irene] has not been working diligently to regain custody of [Tyler] and is unable to provide safe, and appropriate care for him. Given that she has not adequately addressed any of the conditions that brought the juvenile into custody, has not demonstrated any significant length of sobriety, has had five other children removed from her care due to the similar conditions, and given that her current compliance with mental health treatment can be partly due to the intensity of the services provided, there is a high likelihood of repetition of neglect.

The trial court made additional findings that Irene failed to complete the Parent Assessment Training and Education (“PATE”) program required by her case plan, declined to participate in shared parenting with Tyler’s foster parents, and “has not availed herself of . . . all opportunities to visit with [Tyler],” advising GCDHHS in September 2016 that “she had given up and did not want to visit with him at that time.” The trial court also found that Irene had been convicted of three alcohol-related offenses and five counts of second-degree trespass between 8 September 2015 and 1 August 2016; that she is “not searching for work;” and that she made no contribution toward the cost of Tyler’s care, despite “receiv[ing] between \$30.00 to \$50.00 a week from Mr. Lynn’s sister to help . . . pay bills.”

Irene takes exception to the trial court’s finding that she “acknowledged in her testimony at this hearing that she is not ready to assume custody of the juvenile at this time.” Our review of the hearing transcript reveals ample support for this

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finding. Irene testified that she “need[s] time to clean [her]self up” and is “not ready today” to have custody of Tyler. She further conceded she “still ha[s] a ways to go” to address the issues that brought Tyler into GCDHHS custody.<sup>3</sup> We hold that this finding is supported by clear, cogent, and convincing evidence. As Irene does not contest the remaining findings quoted above, they are binding for purposes of our review. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Irene also claims the trial court erred in concluding that Tyler was likely to experience a repetition of neglect if returned to her care.<sup>4</sup> We disagree. It is true that the evidence and the trial court’s findings show that Irene had made recent strides toward attaining sobriety and stabilizing her mental health at the time of the termination hearing. However, such last-minute progress must be viewed in light of Tyler’s eighteen months in GCDHHS custody and Irene’s longstanding issues with substance abuse, mental illness, criminal activity, and lack of stable housing or

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<sup>3</sup> Irene’s brief lacks a reference to any page of the hearing transcript or to the “Narration of Testimonial Evidence” included in the record on appeal in violation N.C.R. App. P. 28(b)(6). Insofar as respondent-mother offered inconsistent testimony regarding her preparedness to take custody of Tyler, the trial court properly acted within its role as fact-finder to resolve the conflict. “When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate.” *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397-98 (1996).

<sup>4</sup> Although Irene characterizes this determination as a finding of fact, it is in the nature of a conclusion of law that must be supported by the court’s evidentiary findings. *See In re Pope*, 144 N.C. App. 32, 36, 547 S.E.2d 153, 156 (2001) (addressing “whether the trial court’s findings of fact support a *conclusion of law* that there is a probability of repetition of neglect if the minor child were returned to Respondent” (emphasis added)), *aff’d per curiam*, 354 N.C. 359, 554 S.E.2d 644 (2001); *see also* N.C.G.S. § 7B-101(15) (providing legal standard for neglect).

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income, as well as the fact that Irene lost or relinquished custody to five other children. The trial court judge was in the best position to consider this evidence in making findings of fact and conclusions of law. Weighing history, current status, and possible future progress is a difficult exercise and we do not discount Irene's efforts to improve her life and that of Tyler. Given this history, we conclude that the trial court did not err in finding that Tyler was likely to experience a repetition of neglect if he were returned to Irene's care.

Having upheld the trial court's adjudication under N.C.G.S. § 7B-1111(a)(1), we need not review the four additional grounds for termination found by the court. "A single ground under North Carolina General Statutes § 7B-1111 is sufficient to support an order terminating parental rights." *In re: J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006).

Conclusion

The trial court was in the best position to weigh Irene's recent progress, drug usage, and the likelihood of future neglect. We find no basis to disturb its findings, resulting conclusions, and termination of Irene's parental rights.

AFFIRMED.

Judges BRYANT and HUNTER, JR. concur.

Report per Rule 30(e).