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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-203

Filed: 19 September 2017

Stokes County, Nos. 15 JT 42-44

IN THE MATTER OF: A.L.G., A.L.G. and S.B.G.

Appeal by Mother from orders entered 14 November 2016 by Judge Charles M. Neaves, Jr., in Stokes County District Court. Heard in the Court of Appeals 24 August 2017.

Jennifer Oakley Michaud for Petitioner-Appellee Stokes County Department of Social Services.

Jeffrey William Gillette for Respondent-Appellant Mother.

James N. Freeman, Jr., for Guardian ad Litem.

DILLON, Judge.

Mother appeals from the trial court's order terminating her parental rights to A.L.G. ("Alice"), A.L.G. ("Addison"), and S.B.G. ("Steven").¹ After careful review, we affirm.

¹ Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

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In April 2015, the Stokes County Department of Social Services (“DSS”) obtained nonsecure custody of all three juveniles and filed petitions alleging that they were neglected. Following a hearing, the trial court entered an order in July 2015 adjudicating the three juveniles neglected. The court based its adjudication on findings that both parents had severe substance abuse addictions that persisted into recent months, that the juveniles had witnessed the parents using IV drugs, and that both parents had pending probation violations and criminal charges. In a separate disposition order, the trial court ordered the juveniles to remain in DSS custody.

In August 2016, DSS filed three motions to terminate Mother’s parental rights to the juveniles under sections 7B-1111(a)(1), (2), (6), and (7) of the North Carolina General Statutes. Following a hearing, the trial court entered three orders in November 2016 terminating Mother’s parental rights to the juveniles based upon the grounds of neglect, willful failure to make reasonable progress towards correcting the conditions that led to removal, and dependency. The trial court also concluded that termination was in the juveniles’ best interests. Mother appeals. The trial court also terminated the parental rights of Father, but Father does not appeal.

On appeal, Mother challenges the trial court’s grounds for terminating her parental rights. Pursuant to N.C. Gen. Stat. § 7B-1111(a), a trial court may terminate parental rights upon a finding of one of eleven enumerated grounds. If this Court determines that the findings of fact support one ground for termination, we

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need not review the other challenged grounds. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003). Mother has not challenged any of the trial court's findings of fact as lacking in evidentiary support. Consequently, we presume that the findings of fact are supported by competent evidence and, therefore, are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009).

After reviewing the record, we conclude that the trial court was justified in terminating Mother's parental rights based upon neglect. Our juvenile code provides for termination based upon a finding that "[t]he parent has . . . neglected the juvenile" within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). "Neglect" is defined as follows:

Neglected juvenile. – 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. . . .

N.C. Gen. Stat. § 7B-101(15) (2015). 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); *see also In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) ("The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*").

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However, “[w]here, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect.” *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (internal citation omitted). Because the determinative factor is the parent’s ability to care for the child at the time of the hearing, “requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” *Id.* (internal citation omitted).

Under such circumstances, “a prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect.” *Ballard*, 311 N.C. at 713-14, 319 S.E.2d at 231. However, the prior adjudication of neglect, standing alone, does not support termination based on neglect. “The 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.” *Id.* at 715, 319 S.E.2d at 232. Thus, a trial court may terminate parental rights based upon prior neglect of the juvenile only if “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).

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In the instant case, the trial court found and concluded that “[t]he mother . . . [has] neglected the juvenile within the meaning of G.S. 7B-101 and 7B-1111(a)(1) and there is a reasonable likelihood of such neglect continuing in the future.”² The trial court based this conclusion on several other findings of fact which detail Mother’s past neglect of the juveniles due to her substance abuse. Mother does not dispute the trial court’s conclusion of past neglect.

Mother, however, challenges the court’s conclusion of likelihood of future neglect. The trial court made the following findings of fact in support of its legal conclusion:

35. That as of the date of the filing of the Motion for Termination of Parental Rights, the mother had a pending court date in Stokes County Criminal Superior Court for the following charges:
 - i. 6 counts of Felony Obtaining Property by False Pretenses;
 - ii. 4 counts of Felony Forgery of an Instrument;
 - iii. 3 counts of Felony Uttering a Forged Instrument;
 - iv. 3 counts of Felony Identity Theft;
 - v. 1 count of Felony Possession of Stolen Goods.

. . . .
38. That the mother signed into a Family Services Case Plan on 4 June 2015. . . . [The] case plan[] contained the following goals[:]
 - i. Attend and participate in a Parenting

² The trial court entered a separate termination order for each juvenile. Because the substance of the orders is identical, we cite to only one.

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- Psychological Assessment with Dr. Holm and follow all recommendations;
- ii. Complete a Substance Abuse Assessment at an approved facility and follow any and all recommendations and submit to random drug screens from said agency and DSS;
 - iii. Obtain and maintain a safe and stable home for the juveniles and be able to meet all of their basic needs;
 - iv. Maintain weekly contact with DSS;
 - v. Inform DSS of any changes in telephone number and/or address;
 - vi. Comply with the Visitation Agreement.
39. That with the exception of maintaining weekly contact with DSS and keeping DSS informed of any changes in address or telephone number, [Mother has not made] substantial progress on [her] case plan.
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42. That the mother has not visited the juvenile since mid-December of 2015.

Mother argues that the legal conclusion of repetition of neglect is not supported because (1) the trial court failed to factor into its analysis Mother's lengthy incarceration; (2) the trial court failed to acknowledge the steps Mother had taken towards reunification; and (3) the factual findings do not specifically link her actions to a repetition of neglect. For the following reasons, we are not persuaded.

First, we address Mother's incarceration. It is undisputed that Mother's children were removed from her custody on 23 April 2015. She spent most of the next seventeen (17) months in jail based on findings that she had violated her probation.

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Nonetheless, there was a nearly four-month window during this period, from November 2015 to March 2016, when Mother was not incarcerated. However, during that window, Mother made no effort at working on her case plan, and her last visit with the juveniles was in December 2015. Although she had limited time out of jail, she could have, at minimum, scheduled the required psychological and substance abuse assessments and continued to visit her children during that time. The fact that she did virtually nothing supports a finding that she was likely to neglect her children again in the future.

Additionally, the fact that she was arrested for a second probation violation — after being out of jail for less than four months — is relevant to the neglect calculus. Though we have repeatedly held that “[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision,” *In re P.L.P.*, 173 N.C. App. 1, 10, 618 S.E.2d 241, 247 (2005), we have also held that “[a] parent’s incarceration may be relevant to whether [his or her] child is neglected.” *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 730 (2007). While we decline to hold the fact of Mother’s incarceration itself against her, Mother’s actions in subjecting herself to further incarceration support a finding that future neglect was likely.

Next, we address Mother’s contention that the trial court failed to consider the positive steps she had taken at the time of the hearing. Mother testified at trial that she had taken steps to provide her children a safe and supportive home after her

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release from prison. We find no support for Mother's assertion that the trial court failed to take this evidence into account. To the contrary, the trial court even questioned Mother during her testimony. However, it appears that the trial court did not give much weight to Mother's testimony. As the trier of fact, it is solely within the province of the trial court and the trial court alone to weigh the credibility of a witness; it is not our duty to re-weigh such a determination. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985). Indeed, the trial court evaluated Mother's testimony and rightfully exercised its discretion.

Lastly, we reject Mother's contention that the findings of fact were not linked to the legal conclusion regarding repetition of neglect. As discussed above, Mother's inaction amply supports a finding that neglect was likely to occur in the future. Accordingly, we find no error in the trial court's termination of Mother's parental rights based on the ground of neglect, and we affirm the trial court's order.

AFFIRMED.

Judges CALABRIA and DAVIS concur.

Report per Rule 30(e).