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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1283

Filed: 20 March 2018

Alamance County, No. 16 JT 180

In re: J.T.S.

Appeal by respondent-mother from order entered 5 September 2017 by Judge Kathryn W. Overby in Alamance County District Court. Heard in the Court of Appeals 21 February 2018.

Jamie L. Hamlett, for petitioner-appellee Alamance County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by Jennifer M. Hoefling and Elvira V. Nunez, for Guardian ad Litem.

Rebekah W. Davis, for respondent-appellant mother.

ARROWOOD, Judge.

Respondent-mother appeals from an order terminating her parental rights as to her minor child, J.T.S. ("Jack").[1] For the reasons stated herein, we affirm the order of the trial court.

I. Background

[1] Pseudonyms have been used to protect the identity of the minor child.

On 8 December 2016, the Alamance County Department of Social Services ("DSS") filed a juvenile petition for non-secure custody of Jack alleging that he was neglected and dependent. The petition further alleged as follows. Respondent-mother was incarcerated when Jack was born. Jack was placed with respondent-mother's cousin, Ms. CC, while respondent-mother was incarcerated. On or about 28 November 2016, respondent-mother was released from prison, and Jack was transitioned back into her care. After approximately seven days in his parents' care, Jack was admitted to the hospital for failure to thrive on 5 December 2016. When DSS received a report on Jack's hospitalization, it was concerned that Jack's parents' care contributed to his failure to thrive, including their being high or intoxicated, unsafely co-sleeping with Jack, not having supplies for an infant, lethargy impacting Jack's feeding, and having an injurious home environment due to thick cigarette smoke in the home.

DSS obtained non-secure custody of Jack, and placed Jack with Ms. CC. The order for non-secure custody included a finding that the juvenile was "exposed to a substantial risk of physical injury . . . because the parent . . . created conditions likely to cause injury . . . or has failed to provide, or is unable to provide, adequate supervision or protection."

The matter came on for hearing on 8 February 2017, and an order adjudicating Jack neglected and dependent was filed 24 February 2017. The order vested custody

of Jack with DSS, and determined it was in Jack's best interest for placement to remain with Ms. CC. The trial court ordered that respondent-mother take part in mental health and substance abuse assessments and follow all recommendations, submit to random drug screens, enroll in parenting classes, obtain and maintain appropriate housing and sufficient income to meet Jack's needs, and cooperate with Child Support Enforcement. These activities were reasonably related to the reasons for removal and were aimed at reunification with the juvenile. The trial court granted respondent-mother visitation on a daily basis for up to two hours, and found that she had the ability to pay a reasonable portion of the costs of Jack's care.

Respondent-mother was extremely inconsistent in visiting the child, only visiting Jack five times from the time he was removed from her care until March 2017. At one of the visitations, on 18 February 2017, respondent-mother did not tend to Jack's needs and mocked him. She also shook Jack, causing him to spit up. At another visitation, on 19 February 2017, respondent-mother brought a stranger with her, and appeared under the influence, seeming to fall asleep while holding Jack. Respondent-mother appeared disinterested when DSS addressed these concerns with her. On 8 March 2017, the trial court modified respondent-mother's visitation to once a week for an hour because of her inappropriate actions.

On 9 March 2017, respondent-mother's probation was revoked for missing curfew, leaving the county without permission, and failing drug screens. She was incarcerated thereafter.

On 3 May 2017, the trial court held a permanency planning hearing and changed the primary plan from reunification to adoption, with a secondary plan of reunification.

On 28 June 2017, DSS filed a motion to terminate respondent-mother's parental rights on the grounds of (1) neglect, (2) dependency, (3) failure to pay reasonable cost of care, and (4) willfully abandoning the juvenile for at least six months. On 21 July 2017, respondent-mother filed an answer. The motion came on for hearing before the Honorable Kathryn W. Overby on 16 August 2017.

At the hearing, the trial court found as follows. Prior to her incarceration, respondent-mother did not address any of the items in her service plan or in court orders, including substance abuse issues and providing a safe and appropriate home. She demonstrated no effort to obtain housing or employment, and had a below average amount of contacts with the social worker assigned to oversee Jack's care. Through the maternal grandmother, respondent-mother made only four child support payments. Respondent-mother made no payments prior to entering a voluntary support order that became effective in March 2017. Despite being unemployed, she

had the ability to work, to pay the full support amount, and to pay more than zero towards the cost of care prior to March 2017.

Since being incarcerated, the social worker reported that respondent-mother appeared alert and well at meetings, and also that she reported attending parenting classes and a program where she can record herself reading a book, which can be sent to Jack. Further, respondent-mother reported working in the kitchen at the prison. However, the trial court also found:

> 81. [Respondent-mother] is doing well in a structured environment. However, she plans to return to the environment where she was using controlled substances.
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> . . . .
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> 88. [Respondent-mother] has not made progress on addressing issues of concern. Her failure to address the issues is willful. She had the ability to attend treatment but chose not to prior to her incarceration.
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> . . . .
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> 90. The issues that [respondent-mother] continues to encounter would produce an unhealthy and unsafe environment for [Jack].

On 5 September 2017, the trial court entered an order terminating respondent-mother's parental rights on the grounds of neglect, dependency, and failure to pay a reasonable cost of care. The trial court concluded that termination of respondent-mother's parental rights was in Jack's best interest.

Respondent-mother appeals.

II. Discussion

Respondent-mother argues the trial court erred in terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2017) because the findings and evidence did not support the trial court's conclusion that there was a reasonable possibility of a repetition of neglect. We disagree.

"[O]ur standard of review for the termination of parental rights 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 Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (citation and internal quotation marks omitted). Findings of fact made by the trial court are binding if they are not challenged on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted). "The trial court's conclusions of law are reviewable *de novo*[.]" *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and internal quotation marks omitted).

A trial court may terminate parental rights upon a finding of any one of the grounds enumerated in N.C. Gen. Stat. § 7B-1111 (2017). Here, the trial court terminated respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(3), (a)(6). Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights upon a finding that:

> [t]he parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

A neglected juvenile is defined as:

> [a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent . . .; 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) (2017). If the juvenile is removed from the parent before the termination hearing, as here, then "[t]he 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." *In re Ballard,* 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted). The parent's rights may "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 [his] parents." *In re Reyes,* 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted).

Here, the past adjudication of neglect is not in dispute, and the trial court did not err by determining that respondent-mother failed to improve her parenting skills and circumstances to provide an appropriate level of care. Prior to respondent-mother's return to prison in March 2017, she made no progress in addressing the

issues that led to Jack's removal as outlined in the court order and services plan, and did not consistently visit Jack, even though his caretaker lived only ten minutes from her residence. She made no attempts to secure employment or obtain appropriate housing, and paid zero towards Jack's support until March 2017. Furthermore, although she had the ability to attend treatment prior to her incarceration, she took no steps to address her substance issues.

Once incarcerated, respondent-mother did not consistently and meaningfully reach out to the social worker. The social worker testified, and the trial court found, that she had a below average amount of contacts with the social worker assigned to oversee Jack's care. On his own initiative, the social worker visited respondent-mother on 17 March 2017. Thereafter, respondent-mother had four contacts with the social worker. During her six months of incarceration, she only made three phone calls to Ms. CC to inquire about Jack. She also sent him a picture and a letter.

In July 2017, respondent-mother reported to the social worker that she was working in the prison's kitchen, attending a 12-step program, and participating in a program where she can record herself reading a book, which can be sent to Jack. Before the termination hearing, respondent-mother began a parenting class, and had attended two classes. While the trial court found that respondent-mother "is doing well in a structured environment[,]" it noted that, upon her release, she plans to return to the environment where she was using controlled substances. This finding

is supported by clear and convincing evidence because the only housing plan offered by respondent-mother at the termination hearing was to reside with the maternal grandmother and grandfather upon her release, where she had lived prior to her incarceration, and which was previously determined to be unhealthy and unsafe for Jack.

On appeal, respondent-mother challenges finding of fact 88, which reads: "[respondent-mother] has not made progress on addressing issues of concern. Her failure to address the issues of concern is willful. She had the ability to attend treatment but chose not to prior to her incarceration." This finding is supported by clear and convincing evidence, and supports a likelihood of the repetition of neglect, as respondent-mother has not obtained mental health and substance abuse assessments despite the opportunity to do so prior to incarceration, did not submit to random drug screens as requested by the social worker prior to incarceration, has not obtained, or even planned, appropriate housing and employment for after her release, and has not meaningfully cooperated with child support services. Furthermore, it was respondent-mother's own, willful behavior that caused her probation to be revoked. The fact that the issues which led to Jack's removal have not been resolved supports finding of fact 90, which states, "[t]he issues that [respondent-mother] continues to encounter would produce an unhealthy and unsafe environment for [Jack]."

These findings demonstrate that respondent-mother made little progress towards resolving the issues that led to Jack's removal, thus, there was little evidence of changed conditions on the part of respondent-mother. *See Matter of Allred*, 122 N.C. App. 561, 568, 471 S.E.2d 84, 88 (1996) (affirming a determination of neglect where the mother failed to improve parenting skills appropriately, although she made some improvements) (citation omitted). The findings of the trial court support the conclusion that there is a likelihood of the repetition of neglect. Therefore, we hold that the trial court properly found that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate respondent-mother's parental rights.

While respondent also challenges the trial court's conclusion that the grounds for termination listed in N.C. Gen. Stat. § 7B-1111(a)(3) and (a)(6) existed in this case, we need not address these challenges given our decision to uphold the trial court's conclusion that respondent's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426-27 (2003) ("A finding of any one of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat. §] 7B-1111 is sufficient to support a termination.") (citation omitted). Respondent-mother has not challenged the disposition portion of the order. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges STROUD and DAVIS concur.

Report per Rule 30(e).