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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1129

Filed: 20 March 2018

Chatham County, Nos. 07JT19, 10JT3

IN THE MATTER OF: A.S., R.S.

Appeal by respondent parents from orders entered 20 June 2017 by Judge Beverly Scarlett in Chatham County District Court. Heard in the Court of Appeals 22 February 2018.

Holcomb & Stephenson, LLP, by Deana K. Fleming, for petitioner-appellee Chatham Country Department of Social Services.

Amanda Armstrong for guardian ad litem.

Julie C. Boyer for respondent-appellant mother.

Sydney Batch for respondent-appellant father.

ZACHARY, Judge.

Respondents-parents K.S. ("father") and T.T. ("mother") appeal from orders terminating their parental rights to their children Alice and Rory.[1] On appeal, father argues that the trial court erred by finding that grounds existed to terminate his parental rights. Mother argues on appeal that the trial court erred by finding that

[1] We adopt the pseudonyms used by the parties to protect the children's identities.

grounds existed to terminate her parental rights and that the trial court abused its discretion by concluding that it was in the best interests of Alice and Rory to terminate mother's parental rights. For the following reasons, we affirm the trial court's orders.

Background

Mother and father are the parents of Alice, born in 2005, and Rory, born in 2008. The Chatham County Department of Social Services ("DSS") first became involved with the family in March 2006, when Alice was a few months old, due to domestic violence between the parents. As a result, DSS provided mother and father with case management services to address domestic violence. In March 2007, mother and father had a verbal and physical altercation while father was holding Alice. During the DSS investigation, additional concerns regarding the care Alice was receiving from mother and father became apparent. A juvenile petition was filed, and Alice remained in DSS custody from March 2007 to March 2009. During this time, Rory was born to mother and father.

In December 2009, several months after Alice was returned to the custody of mother and father, another domestic violence incident occurred in which while father was resisting arrest, he held Rory so hard she could not breathe. As a result, in January 2010, DSS filed petitions alleging that the juveniles were neglected and dependent juveniles. In February 2010, the juveniles were adjudicated as dependent

juveniles and the trial court found that custody should remain with mother, who was living no longer living with father at the time, and ordered the parents to engage in couples counseling and other services. In April 2010, mother and the juveniles returned to father's home. However, in July 2010, due to ongoing disputes between mother and father, the trial court determined that mother and father had to separate or the juveniles would be removed from the home. The trial court also ordered Alice and Rory into the legal custody of DSS while remaining in mother's physical custody and providing visitation for father. The juveniles remained in the legal custody of DSS until March 2011, when the trial court awarded custody of the juveniles to mother. In May 2011, the trial court awarded mother sole legal and physical custody of the children and ceased reunification efforts with father. The trial court nonetheless awarded weekly supervised visitation for father.

In 2015, DSS received reports alleging that mother's boyfriend was sexually abusing the juveniles and that mother was aware of the abuse and did nothing to stop it. DSS enacted a safety plan and directed mother not to allow the juveniles to be in the presence of her boyfriend, which mother violated. In February 2016, DSS filed a juvenile petition and obtained nonsecure custody of the juveniles. In March 2016, the juveniles were adjudicated abused, neglected, and dependent, and mother and father were ordered to complete certain services, such as therapy and psychological evaluations.

On 14 October 2016, DSS filed a motion to terminate the parental rights of the mother and father. The trial court heard this motion on 9 March 2017 and 27 April 2017. On 20 June 2017, the Court filed four separate orders terminating the parental rights of mother and father as to both Alice and Rory. The trial court adjudicated grounds to terminate father's rights based on neglect and dependency; adjudicated grounds to terminate mother's parental rights based on neglect and dependency; and concluded that termination of the parental rights of mother and father was in the best interests of the juveniles. Both mother and father filed timely notices of appeal.

Standard of Review

A termination of parental rights proceeding involves a two-step process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001) (citation omitted). First, "[i]n the adjudicatory stage, the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (citation omitted). This Court reviews "whether the trial court's findings of fact are supported by clear and convincing evidence and whether the findings of fact support the conclusions of law." *Id.* "Findings for which there exists competent evidence are binding on appeal, even where there is evidence to the contrary." *In re Mills*, 152 N.C. App. 1, 6, 567 S.E.2d 166, 169 (2002) (citation omitted). Furthermore,

"[a]n appellant is bound by any unchallenged findings of fact." *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014) (citation omitted).

If the trial court determines that at least one ground for termination exists, it proceeds to the dispositional stage. *Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602; *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908 (citation omitted). At this stage, "the court shall issue an order terminating the parental rights unless it further determines that the best interests of the child require otherwise." *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. The trial court's determination of the child's best interests is reviewed for abuse of discretion. *Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602 (citation omitted). A court may be reversed for abuse of discretion only if the appellant can show that its ruling "was so arbitrary that it could not have been the result of a reasoned decision." *White v. White,* 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Parents challenge all grounds for termination found by the trial court. It being axiomatic, however, that "any single ground . . . is sufficient to support an order terminating parental rights. . . ," then "if we determine that the court properly found one ground for termination under N.C. Gen. Stat. § 7B-111(a), we need not review the remaining grounds." *In re B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62 (citations omitted).

Discussion

In the instant case, the trial court found neglect and dependency grounds existed to terminate the parental rights of both mother and father. It is well established that any "single ground . . . 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).

A neglected juvenile is defined by N.C. Gen. Stat. § 7B-101(15) as one who "does not receive proper care, supervision, or discipline" from the juvenile's parent or "has been abandoned" or "lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15) (2017). In order to determine that a juvenile is neglected, there must be evidence of "some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901-02 (1993) (citation and quotation marks omitted). The determination that a child is neglected is a conclusion of law. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675-76 (1997).

"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). Where "the parent has been separated from the child for an extended period of time, the petitioner must show that the parent has neglected the child in the past and that the parent is likely to neglect the child in the future." *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725,

729 (2007). "Although prior adjudications of neglect may be admitted and considered by the trial court, they will rarely be sufficient, standing alone, to support a termination of parental rights, since the petition must establish that neglect exists at the time of hearing." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citation omitted). "Thus, the trial court must also consider evidence of changed conditions in light of the history of neglect by the parent and the probability of a repetition of neglect." *Id*. In this case, the trial court's findings support its conclusions regarding past neglect by both parents, as well as the likelihood of future neglect if the children were returned to the care of either parent.

I. Prior Neglect by Father

Father contends that the trial court erred in finding neglect, in that the trial court relied heavily on the circumstances that led to his previous neglect of the children that no longer exist, and that thus the trial court erred in finding that neglect existed at the time of the hearing and that it was likely to be repeated.

In the instant case, the trial court made the following identical findings of fact in both orders relevant to father's prior neglect of the children:

> 10. When the girls were taken into []DSS custody in February[] 2016, Respondent father had not seen the girls very often and was not a caretaker.
>
> . . .
>
> 14. Dr. Yoch gives Respondent father the following diagnoses: Cannabis Use Disorder, severe; Borderline Intellectual Functioning; Specific Learning Disability; Paranoid Personality Disorder (with narcissistic traits);

> Parent-Child Relational Problem; and Child Neglect (e.g., essential abandonment for 5 plus years; failure to assure his children's needs were met or to support them). *The court finds that Respondent father carries these diagnoses which impact his ability to take care of his children.*

(emphasis added) The trial court also incorporated Dr. Yoch's "serious" concerns regarding father's ability to parent Alice and Rory as findings of fact in its order. These findings included, *inter alia*:

> a. [Father] appears to have no investment in raising his children as he has had very little contact with them for the past five (5) years.
>
> b. As an infant, he gave [Alice] Nyquil cough syrup and Tylenol cold medication every four hours from infancy until at least the age of six (6) months.
>
> c. In March 2007 when [Alice] was removed from the home, she was diagnosed with Failure to Thrive as her weight was so low.
>
> . . .
>
> f. The history of domestic violence between Respondent parents, including [Alice] and later her sister being held by Respondent father during the violence.
>
> g. On one occasion when law enforcement attempted to arrest him, Respondent father held [Rory] so tightly that she could not breathe.
>
> h. Respondent father did not complete the PEACE program, a program for perpetrators of domestic violence.
>
> . . .
>
> j. Respondent father denied that he had any personal faults and blamed women for things for which he refused to take any responsibility.
>
> k. Respondent father is pessimistic and distrustful; is

> heavy handed and insensitive.
>
> l. Respondent father's narcissism prevents him from admitting his dependency on marijuana [is] a problem.
>
> m. Respondent father has a problem managing his anger and blamed Respondent mother for all the incidences of violence between them.
>
> n. Even though he believed that Respondent mother's boyfriend did sexually abuse the girls while she denied [it] ever happened, he was still willing to allow her to co-parent them, thus again putting them at risk.
>
> . . .
>
> p. Respondent father wants to co[-]parent with Respondent mother and is open to the children being placed with Respondent mother. At the same time, Respondent father believes Respondent mother is lying about having broken up with the man who hurt their children yet wants the children to stay with her. Respondent father does not want the full time burden of caring for the children.

Father does not challenge the evidentiary support for the above findings. However, he does challenge Findings of Fact 21 in the respective orders, which states:

> 21. Respondent father has provided very little for the children over the past 4 – 5 years. His income was over $19,000 in 2010 and he still allowed the children little contact with him.

Father argues that mother prevented him from seeing the juveniles. However, in 2010, the trial court had awarded father visitation with the children and father canceled or did not attend numerous scheduled visits. Furthermore, father was not prevented by mother from providing for the children financially or attending the

supervised visitation that the trial court awarded him in 2011. Accordingly, we conclude that this finding of fact was supported by competent evidence.

Moreover, the remaining findings of fact support the trial court's conclusion that father neglected the children. He had sporadic contact with them for 5 years; refused to acknowledge or work on his issues regarding substance abuse, domestic violence, and parenting; was not interested in parenting the children on a full-time basis; and desired to co-parent with mother despite believing she failed to protect the children from sexual abuse and subsequently lied about ending her romantic relationship with the perpetrator. These findings, *inter alia*, support the trial court's conclusion that father neglected Alice and Rory.

Father also maintains that the trial court erred by finding a likelihood of a repetition of neglect if the children were returned to his care. The father asserts that the children's neglect was due to the actions of the mother, and that he had limited contact with the children at that time. However, the trial court's conclusion that neglect is likely to be repeated by father is supported by the trial court's findings that father has had little contact with the children the past 5 years, despite his visitation privileges; father has an on-going, untreated substance abuse problem that his narcissism prevents him from acknowledging; father is not interested in parenting the children full-time; father wants to co-parent with mother, despite acknowledging that she neglected the children; and father has denied having any personal faults and

has blamed women rather than take any personal responsibility. These findings, *inter alia*, support the trial court's conclusion that there is a substantial likelihood that father is likely to repeat his neglect of Alice and Rory if he were to obtain custody of the children. Accordingly, we affirm the adjudication under N.C. Gen. Stat. § 7B-1111(a)(1).

In that grounds for termination of father's parental rights on the ground of neglect were properly shown pursuant to subdivision § 7B-1111(a)(1), we need not review the trial court's adjudication under N.C. Gen. Stat. § 7B-1111(a)(6). *In re Stewart Children*, 82 N. C. App. 651, 655, 347 S.E.2d 495,498 (1986) (holding that once one statutory ground for termination is established, this Court need not address a respondent's challenges to other grounds.).

II. Mother's Appeal

A. Adjudication Under N.C. Gen. Stat. § 7B-1111(a): Neglect

On appeal, mother contends that the trial court erred in adjudicating the existence of grounds to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) and (6), based on neglect and dependency. As discussed above, "[t]he standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent, and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004) (quotation marks and citation omitted). Moreover, any

single ground for termination is sufficient to support a trial court's termination order. *In re J.M.W.*, 179 N.C. App. at 789, 635 S.E.2d at 917.

We first consider the trial court's determination that grounds existed to terminate mother's parental rights based on neglect. As discussed above, a neglected juvenile is defined as one who "does not receive proper care, supervision, or discipline" from the juvenile's parent or "has been abandoned" or "lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. § 7B-101(15). Mother argues that the trial court's conclusion that Alice and Rory were "impaired and at a substantial risk of impairment as a result of mother's neglect" was not supported by competent evidence or the findings of fact. We disagree.

Mother challenges Findings of Fact 25, 26, and 27 in the order terminating her parental rights as to Alice, and Findings of Fact 27, 28, and 29 in the order terminating her parental rights as to Rory.[2] However, as mother correctly notes, these findings are more properly conclusions of law; thus, she argues that the conclusions of law are not supported by the findings of fact. *In re McLean*, 135 N.C. App. 387, 390, 521 S.E.2d 121, 123 (1999) ("Whether a child is 'neglected' is a conclusion of law which must be supported by adequate findings of fact."). Because mother does not challenge any additional findings of fact, they are binding on appeal. *See B.S.O.*, 234 N.C. App. at 708, 760 S.E.2d at 62.

[2] These findings of fact are identical in the two orders.

In the instant case, the trial court incorporated Dr. Yoch's concerns regarding mother's parenting as findings of fact in each order to support its conclusions of law[3]:

> a. Respondent mother gave [Alice] Nyquil cough syrup and Tylenol cold medicine every four (4) hours from infancy for at least six (6) months[.]
>
> b. [Alice] was diagnosed with Failure to Thrive on the day of removal from the home in March 2007 as her weight was so low.
>
> d. Respondent mother allowed both of her daughters to be sexually abused by her boyfriend, . . . and then did not believe or protect them. The children saw Respondent mother engaged in sexual acts with [her boyfriend].
>
> e. In 2015, the children missed school a lot and were late for school. They did not have sufficient food to eat. Respondent mother tried to transfer the children to another school because the school staff were too much in her business.
>
> f. [Alice] reported that her mother did not care and neglected her. She also reported that [Respondent mother's boyfriend] would drink and drive with the girls in the car.
>
> g. Respondent mother told the children not to tell DSS what happened at home.
>
> h. Respondent mother did not show the girls affection during her visits with them. She showed little interest[] in interacting with them during visits.
>
> i. Respondent mother ultimately admitted that she knew the sexual abuse occurred, however continues to call [her

[3] While "[r]ecitations of the testimony of each witness do not constitute findings of fact by the trial [court]," *Moore v. Moore*, 160 N.C. App. 569, 571, 587 S.E.2d 74, 75 (2003) (emphasis omitted), in this case, the trial court expressly incorporated Dr. Yoch's concerns from her report and testimony. The findings do not simply recite statements from witnesses, but are clear statements of fact.

> boyfriend], the perpetrator[,] a good person and did not voice anger at him for what he had done.
>
> j. Respondent mother spent a lot of money on [her boyfriend] while skimping on things for her children.
>
> k. Respondent mother never voiced compassion for what had happened to the girls and shows no guilt or remorse.
>
> l. For months, Respondent mother left the girls with a sitter for their waking hours, as well as overnight hours. The sitter is intellectually impaired and had very few supplies for the girls. During their time at the sitter's, the girls slept on the floor.
>
> m. Respondent mother appears defensive, dishonest, not invested in parenting and has no self-awareness.
>
> n. Respondent mother has no understanding of the number of ways the girls have suffered neglect and abuse, starting with their failure to thrive.
>
> o. Respondent mother allowed at least two of her partners to have contact with the girls, despite their substance abuse.
>
> r. Respondent mother is not interested in people and cannot form attachments. She is distrustful, self-absorbed, cold, undemonstrative and has few friends. She is guarded, resentful and has little insight into the impact her actions or words have on others.

Mother does not challenge the sufficiency of the evidentiary support for these findings on appeal, and we conclude that the above findings of fact support the trial court's conclusion of law that Alice and Rory are neglected juveniles. DSS removed Alice and Rory from mother's home because she allowed her daughters to be sexually

abused by her boyfriend and failed to protect them from that abuse. Despite mother's knowledge of the sexual abuse, she continued her relationship with the perpetrator in violation of the safety plan, described him as a good person, and expressed no anger toward him for sexually abusing her daughters. Mother also failed to express remorse or compassion for what her daughters suffered, attempted to isolate them by changing schools, and instructed them not to tell anyone about what happened at home. Moreover, mother did not provide the juveniles with sufficient food at school; she left them with an intellectually-impaired caretaker where they slept on the floor and had few supplies; and she skimped on things for them while spending a lot of money on her boyfriend.

Mother correctly notes that evidence of changed circumstances should be noted by the trial court. She asserts that she "is pulling away from [the children's abuser] in the same way that she pulled away from [father]," and that therefore "there is not a substantial likelihood that Alice and Rory would be neglected if returned to her custody." The trial court recognized, however, that mother's refusal to go into counseling and the fact that in February 2017 mother was still in love with the man who abused her children was clear evidence that there was a substantial probability of a repetition of the children's neglect if they were returned to mother's care.

Given the above findings as well as mother's attempts to isolate the children and prevent them from disclosing what happened at the hands of mother's boyfriend,

we hold that the trial court did not err in determining that Alice and Rory were neglected juveniles and that there was a likelihood that neglect would repeat or continue if returned to mother's care and custody. *See C.W.*, 182 N.C. App. at 220, 641 S.E.2d at 729.

Because grounds for termination of mother's parental rights were properly established pursuant to subdivision § 7B-111(a)(1), we need not address mother's additional arguments regarding termination pursuant to N.C. Gen. Stat. § 7B-111(a)(6). *In re Stewart Children*, 82 N. C. App. 651, 655, 347 S.E.2d 495,498 (1986) (holding that once one statutory ground for termination is established, this Court need not address a respondent's challenges to other grounds.).

B. Disposition Under N.C. Gen. Stat. § 7B-1110

Next, mother argues that the trial court abused its discretion at the dispositional stage when it concluded that it was in the best interests of Alice and Rory to terminate mother's parental rights. As we noted above, the trial court's determination of the child's best interests is reviewed for an abuse of discretion. *Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602 (citation omitted). A court may be reversed for abuse of discretion only if the appellant can show that its ruling "was so arbitrary that it could not have been the result of a reasoned decision." *White,* 312 N.C. at 777, 324 S.E.2d at 833. In making this determination, the trial court must consider the following factors pursuant to N.C. Gen. Stat. § 7B-1110(a):

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any other relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2017).

In the instance case, the trial court made the following relevant findings concerning Alice:

> 19. [Alice] is eleven (11) years old and has been placed with Linda Harris since January 20, 2017. Respondent mother offered Ms. Harris as a possible placement for [Alice]. Ms. Harris knew [Alice] and her sister before they were placed in [DSS] custody. Ms. Harris would like to be considered as a long-term placement for [Alice] and her home is a potential adoptive home.
>
> . . .
>
> 21. [Alice] attends therapy but has no special medical needs. Her needs are being met in her current foster home. The foster home provides her with safety and stability.
>
> 22. [Alice] is bonded to both of her parents. She is forming a bond with her foster mother.
>
> . . .
>
> [29]b. Termination of Respondent's parental rights is necessary to implement the permanent plan of adoption.
>
> [29]c. Terminating the parental rights of both parents are

> the only barriers to the adoption of the child and those barriers can be overcome in a reasonable period of time.

Additionally, the trial court made the following relevant findings concerning Rory:

> 19. [Rory] is eight (8) years old and has been placed with . . . kinship providers. [They] have expressed interest in adopting [Rory].
>
> . . .
>
> 21. [Rory] attends therapy and is beginning to express her feelings. She is learning to trust adults to take care of her.
>
> 22. [Rory's] needs are being met in her current foster home. The foster home provides her with safety and stability.
>
> 23. [Rory] is bonded with her mother but she is comfortable in her current foster care home.
>
> 24. [Rory] has said that she wants to go home.
>
> . . .
>
> [31]b. Termination of Respondent's parental rights is necessary to implement the permanent plan of adoption.
>
> [31]c. Terminating the parental rights of both parents are the only barriers to the adoption of the child and those barriers can be overcome in a reasonable period of time.

In light of the historical facts of this case and the trial court's proper consideration of the statutory factors, we hold that the trial court's decision to terminate mother's parental rights was not manifestly unsupported by reason. Accordingly, we hold that the court did not abuse its discretion in finding that terminating mother's parental rights was in Alice's and Rory's best interests. *In re Anderson*, 151 N.C. App. at 98, 564 S.E.2d at 602.

Conclusion

For the reasons stated above, we affirm the trial court's orders terminating the parental rights of respondent parents.

AFFIRMED.

Judges HUNTER and DIETZ concur.

Report per Rule 30(e).