

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1136

Filed: 3 April 2018

Guilford County, Nos. 16-JT-201, 16-JT-408

IN THE MATTER OF: R.L.H., Q.C.W.

Appeal by Respondent-Mother from an order entered 7 July 2017 by Judge Angela C. Foster in Guilford County District Court. Heard in the Court of Appeals 19 February 2018.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender J. Lee Gilliam, for respondent-appellant.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, for guardian ad litem.

Mercedes O. Chut, P.A., by Mercedes O. Chut, for petitioner-appellee.

MURPHY, Judge.

Respondent-Mother (“Leslie”)¹ appeals from the trial court's order terminating her parental rights with her two children, Robert and Quintin, pursuant to N.C.G.S. § 7B-1111(a)(1)-(3). Leslie contends that the trial court’s conclusions regarding statutory grounds for termination were not supported by sufficient findings of fact.

¹ Pseudonyms are used throughout this opinion to protect the identity of juveniles and for the ease of reading. See N.C. R. App. P. 3.1(b).

Leslie challenges the trial court's findings of fact: that probability of repetition of neglect is likely, that she left Robert in placement outside the home for a period of more than 12 months, and that she willfully failed to pay a reasonable portion of the cost of care for the juveniles although financially able to do so. Upon careful review, the findings of fact were supported by clear and convincing evidence and support termination for neglect in accordance with N.C.G.S. § 7B-1111(a)(1). We affirm the termination of her parental rights.

BACKGROUND

Leslie gave birth to Quintin on 18 February 2005 and Robert on 15 November 2011. From March 2008 through November 2014, the Guilford County Department of Health and Human Services ("DHHS") received thirteen Child Protective Services ("CPS") reports regarding Leslie's substance abuse, improper care and supervision of her children, and violence in the home. These reports included allegations that on:

- 18 March 2008, Quintin had burn marks on his body.
- 17 November 2011, Robert's urine tested positive for marijuana while in the neonatal intensive care unit for breathing problems, and Leslie admitted to DHHS that she used marijuana and regularly smoked during her pregnancy.
- 19 January 2012, 1 March 2012, 16 December 2013, and 4 October 2014, Leslie was intoxicated while around and away from her children.
- 19 January 2012, 16 December 2013, 4 October 2014, and 7 October 2014, Leslie was subjected to repeated acts of violence in the home.
- 31 March 2013, Robert's face was scratched.

- 31 March 2013, Leslie did not give Robert his breathing treatment or take him to medical appointments.
- 12 April 2013 and 13 April 2013, Leslie's apartment lacked electrical power.
- 16 December 2013, Leslie had been "staying from place to place."
- 7 October 2014, Robert and Quintin were left alone at home after witnessing an act of domestic violence, the stove was on, and a bag of cocaine was in plain sight.

On 2 May 2015, three-year old Robert was found unattended in a motel room. Leslie reported that she was on drugs at the time. On 12 May 2015, Leslie was diagnosed with "Major Depressive Disorder, Moderate Alcohol Use Disorder, and Moderate Cannabis Use Disorder." On 22 June 2015, after concerns regarding the children's well-being grew at DHHS, Leslie and DHHS entered into an in-home services agreement that required Leslie to submit to substance abuse and domestic violence assessments, as well as follow DHHS treatment recommendations.

Soon after Leslie entered the agreement, on 9 July 2015, DHHS received a new report from CPS that Leslie had: consumed alcohol and smoked marijuana in the children's presence, beaten them with a belt, left them alone, and left them with strangers. Despite Leslie's promises to cooperate with DHHS under the in-home agreement, Leslie did not: complete drug and alcohol screening requests, attend numerous mental health treatment sessions, dissociate herself from a domestic violence perpetrator who had previously bitten her and left knots on her head, or

comply with other DHHS recommendations regarding substance abuse treatment and domestic violence assessments.

Leslie entered into a case plan with DHHS on 5 April 2016. The case plan called for Leslie to follow the recommendations of DHHS in regards to psychological and parental assessments, counseling sessions, employment and housing status, and substance abuse assessments. The case plan's eventual goal was Leslie's reunification with Robert. However, on 12 April 2016, DHHS filed a petition alleging that Robert was a dependent and neglected juvenile. That same day, the trial court filed an order granting DHHS temporary custody over Robert pending the final adjudication. On 14 April 2016, a temporary, twice-weekly visitation plan for Leslie was filed. On 10 June 2016, after Leslie missed seven visits with Robert and Quintin, her visitation schedule for both children was suspended. On 8 August 2016, the trial court adjudicated Robert as neglected and dependent and ordered that he remain in DHHS' physical and legal custody.

On 22 August 2016, DHHS filed a petition alleging that Quintin was a neglected and dependent juvenile. On 25 August 2016, Leslie missed a meeting with DHHS to update the case plan to include Quintin. On 25 October 2016, Quintin was adjudicated as a neglected and dependent juvenile and was ordered to remain in DHHS' legal and physical custody.

The trial court held a permanency hearing regarding Robert and Quintin's custody on 18 January 2017. The court ordered that Robert and Quintin's physical and legal custody remain with DHHS, with primary plans for adoption and secondary concurrent plans for reunification. By the date of the permanency hearing, Leslie had failed: to comply with numerous drug tests, a drug test on 13 April 2016 for cocaine and marijuana, to participate in psychological treatment sessions and assessments, and to present a copy of her lease to social workers on two occasions.

DHHS filed a petition to terminate Leslie's parental rights with Quintin and Robert on 17 February 2017. On 30 May 2017, the trial court terminated Leslie's parental rights with Quintin and Robert on the following grounds: N.C.G.S. § 7B-1111(a)(1), for neglect and probability of repetition of neglect; N.C.G.S. § 7B-1111(a)(2), for willfully leaving Robert outside the home for a period of more than 12 months; and N.C.G.S. § 7B-1111(a)(3), for failure to pay a reasonable portion of the child care of Quintin and Robert although financially able to do so. Leslie timely appealed.²

ANALYSIS

There are multiple grounds for termination of parental rights enumerated by N.C.G.S. § 7B-1111(a). The facts justifying termination of parental rights must be based on "clear and convincing evidence." N.C.G.S. § 7B-1111(b) (2017). "[T]he trial

² Neither father is a party to this appeal or contests the order terminating parental rights.

court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *Matter of J.A.M.*, (7PA17) ___ N.C. ___, ___, 809 S.E.2d 579, 580 (2018) (citation omitted) (internal quotation marks omitted). “Findings of fact to which a respondent did not object are conclusive on appeal.” *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted). “The standard of review in termination of parental rights cases is . . . whether these findings, in turn, support the conclusions of law.” *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 58-59 (2008) (citation omitted). The trial court’s conclusions of law are reviewable de novo by this Court. *Id.* at 146, 669 S.E.2d at 59. “So long as the findings of fact support a conclusion [that one of the enumerated grounds exists] the order terminating parental rights must be affirmed.” *Id.* (brackets in original) (citation omitted). Here, Leslie does not object to any specific findings of fact, but argues that because the children were not in her custody at the time of the termination hearing, a finding of a probability of repetition of neglect did not take into account present conditions.

The trial court may terminate parental rights when a “parent has abused or neglected the juvenile.” N.C.G.S. § 7B-1111(a)(1) (2017). A juvenile is neglected when the juvenile “does not receive proper care, supervision, or discipline from the juvenile's parent” N.C.G.S. § 7B-101(15) (2017). Conclusions that a juvenile is neglected “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).

Neglect exists at the time of a termination hearing even if a child has not been in the custody of the parent for a significant period of time prior to the termination hearing when there is a showing of (1) “a past adjudication of neglect,” and (2) “a probability of repetition of neglect if the juvenile were to be returned to [the parent].” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). The first showing was established by the prior adjudications of neglect that led to the removal of Quintin and Robert from Leslie’s custody, and we focus our analysis on the second showing.

A probability of repetition of neglect must be supported by clear and convincing evidence. *Id.* We have reasoned that there is a probability of repetition of neglect when a parent fails to make “meaningful progress in eliminating the conditions that led to the removal of her children.” *In re Leftwich*, 135 N.C. App. 67, 72, 518 S.E.2d 799, 803 (1999). “The trial court must consider evidence of changed conditions. However, this evidence of changed conditions must be considered in light of the history of neglect by the parents and the probability of a repetition of neglect.” *Matter of Ballard*, 311 N.C. 708, 714, 319 S.E.2d 227, 231 (1984) (citation omitted); *see also Matter of Johnson*, 70 N.C. App. 383, 389, 320 S.E.2d 301, 305-06 (1984) (holding that

sporadic attendance of counseling sessions is not enough to demonstrate lifestyle changes).

Leslie argues that she had made meaningful progress to address the situations that led to the removal of her children. Leslie states that she passed a drug test on 18 January 2017, was seeking employment at the time of the termination hearing, and had been meeting with a social worker. However, the trial court found:

[21] a. [Leslie] has failed to consistently engage in the substance abuse treatment services afforded to her. She continued to use illegal substances regularly despite being ordered to produce three negative drug screens in order to resume visitation with the juveniles. [Leslie] failed to comply with requests for a drug screen on July 26, 2016, October 14, 2016, December 5, 2016, December 13, 2016, December 19, 2016, and January 4, 2017. The Court notes that [Leslie] has had only one negative drug screen on January 18, 2017. [Leslie] most recently tested positive for cocaine and marijuana on April 25, 2017 and admitted to using marijuana in May 2017 [the month of the hearing]. [Leslie] has made some progress with respect to her mental health issues, however, this compliance was unjustifiably delayed. She testified that she has an appointment for a psychiatric evaluation scheduled for June 1, 2017 but, she was aware of her need for an evaluation as of April 2016. She has missed at least two scheduled appointments for the evaluation, and has not been attending her group and individual therapy on a regular basis.

[21] b. [Leslie] does not have sufficient and stable income to meet the needs of herself or the juveniles. She has remained employed off and on since the juveniles have been foster care, but does not have adequate resources

Opinion of the Court

to meet their basic needs. [Leslie] does have housing, but admits she is unable to maintain the rent without having a roommate, and she is one month behind on her rent to date.

[21] c. [Leslie] has not been working diligently to regain custody of the juveniles. Given that she has not adequately addressed any of the conditions that brought the juveniles into custody, has not demonstrated any significant length of sobriety, has not addressed her mental health issues in a consistent and sufficient manner, and is unable to provide safe, and stable housing and care for the juveniles, there is a high likelihood of repetition of neglect.

These uncontested findings demonstrate Leslie's ongoing struggles at the time of the hearing. These ongoing struggles provide clear and convincing evidence that there is a probability of repetition of neglect in spite of what Leslie characterizes as "progress."

We hold that the trial court made adequate findings of fact, supported by clear and convincing evidence that demonstrated both (1) a prior adjudication of neglect, and (2) a probability of repetition of neglect to support its ultimate finding that Robert and Quintin were neglected. The conclusion that termination was proper under N.C.G.S. § 7B-1111(a)(1) is supported by the trial court's findings. As only one ground is necessary for termination of parental rights, we need not reach Leslie's other contentions as to N.C.G.S. § 7B-1111(a)(2)-(3).

CONCLUSION

IN RE R.L.H., Q.C.W.

Opinion of the Court

We hold that the trial court did not err in terminating Leslie's parental rights in accordance with N.C.G.S. § 7B-1111(a)(1).

AFFIRMED.

Chief Judge McGEE and Judge BRYANT concur.

Report per Rule 30(e).