An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1202

Filed: 17 April 2018

Mecklenburg County, Nos. 14 JT 687; 16 JT 533

IN THE MATTER OF: S.C.N.C., C.X.D.T., Minor children.

Appeal by Respondent-Mother from order entered 17 July 2017 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 5 April 2018.

Senior Associate Attorney Keith S. Smith, for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Peter Wood, for respondent-appellant mother.

Alston & Bird LLP, by Kendall L. Stensvad, for Guardian ad Litem.

HUNTER, JR., Robert N., Judge.

Respondent appeals from an order terminating her parental rights to her two children, S.C.N.C. ("Susan") and C.X.D.T. ("Clint").[1] Respondent's counsel filed a no-merit brief, pursuant to North Carolina Rule of Appellate Procedure 3.1 (d). N.C. R. App. P. 3.1 (d) (2017). We affirm.

[1] Pseudonyms are used to protect the identity of the juveniles and for ease of reading. N.C. R. App. P. 3.1 (2017).

I. Factual and Procedural Background

On 1 October 2014, the Mecklenburg County Department of Social Services ("DSS") obtained nonsecure custody of Susan and filed a petition alleging Susan to be a neglected and dependent juvenile. The petition alleged the following facts. DSS first became involved on 29 March 2014, after Susan suffered a skull fracture. Respondent complied with the recommended services, and DSS closed the case.[2] However, on or about 3 September 2014, Respondent and her sister engaged in a physical altercation in Susan's presence, triggering DSS's re-involvement.

The court held a hearing on 20 November 2014. On 11 February 2015, the trial court entered an order adjudicating Susan as a neglected and dependent juvenile. The trial court found the primary issues leading to adjudication were "stable housing; family violence and anger issues; and parenting skills." The court stated the issues "must be resolved to achieve reunification[.]" The court continued legal custody with DSS and awarded Respondent supervised visitation with Susan.[3]

In January 2016, Respondent gave birth to Clint. Although Susan remained in DSS custody, DSS initially allowed Clint to stay with Respondent. However, on 25 October 2016, DSS obtained nonsecure custody of Clint and filed a petition alleging him to be a neglected and dependent juvenile. The petition alleged the

[2] The record does not indicate the date DSS initially closed Respondent's case.

[3] From November 2014 to November 2016, the court held the required review hearings and continued the permanent plan as reunification.

following facts. In March 2016, Respondent again engaged in a violent, physical altercation.[4] In August 2016, Respondent lived with her sister, with whom she previously engaged in family violence. The court found the home "to be unsafe and inappropriate for placement or visitation." Then, in October 2016, Respondent told DSS she lived with a roommate. However, the apartment was in her sister's name. On several occasions, DSS employees found unsafe and unsanitary living conditions in the apartment, including trash on the floor, cockroaches in the apartment, backed up sewage, and feces on the walls.

On 1 November 2016, the court entered a review order, ceasing reunification efforts between Respondent and Susan.[5] The court stated Respondent made "some progress[,]" but noted continued concerns "regarding: 1) lack of consistently demonstrating parenting skills; 2) unstable housing; 3) interpersonal relations and how to deal with conflict and 4) the mother's lack of honesty." The court set the primary plan as adoption.

On 6 December 2016, DSS filed a motion to terminate Respondent's parental rights to Susan, alleging the following grounds for termination: (1) neglect; (2) failure to make reasonable progress; (3) failure to pay a reasonable portion of the cost of care; and (4) dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6) (2017).

---

[4] The petition states a police officer saw Respondent "on top of a victim, punching her with her fists[.]" The petition does not indicate whether law enforcement brought any charges.

[5] The order states the court entered the order on 1 November 2016 and signed the order 8 December 2016, and the order is file stamped 8 December 2016.

The court held a hearing regarding Clint's adjudication on 7 December 2016. On the same day, the court entered an order adjudicating Clint as a neglected and dependent juvenile. The court found the same issues leading to nonsecure custody of Susan existed with regard to Clint—unstable housing, family violence, Respondent's anger issues, and lack of parenting skills. The court continued legal custody with DSS and awarded Respondent supervised visitation with Clint. On 21 February 2017, DSS filed a motion to terminate Respondent's rights to Clint, alleging neglect. *See* N.C. Gen. Stat. § 7B-1111(a)(1).

On 15 May 2017, the court held a hearing on the petitions to terminate Respondent's parental rights.[6,7] DSS first called Romagene Butler, a house specialist for special programs at the CHA Housing Authority. On 11 February 2016, DSS referred Respondent to Butler, to receive a Section Eight housing voucher. CHA Housing Authority issued Respondent a voucher on 26 February 2016. Respondent failed to submit her voucher for any housing, and the voucher expired on 25 June 2016.

DSS called Russell Hancock, an adult outpatient therapist at Carolina's Medical Center. Hancock scheduled his first appointment with Respondent for 5

[6] Megan Demestihas, a permanency planning supervisor at DSS, also testified at the hearing. Her testimony is not pertinent to the issues on appeal.

[7] At the time of the hearing, Susan's and Clint's fathers' identities were unknown. The court terminated Susan's father's parental rights, but did not terminate Clint's father's parental rights. No parent besides Respondent is a party to this appeal.

November 2015, which Respondent attended. However, Respondent failed to attend two appointments, one on 20 November 2015 and the other on 17 March 2016. Accordingly, Hancock terminated Respondent's participation in the program on 29 March 2016. However, the court reinitiated Respondent's participation on 13 April 2016. Respondent completed the program, and Hancock prepared a report of his findings. In his report, he found Respondent failed to thoroughly understand why she did not have custody of Susan.[8] He described this failure as a "concern" because:

> overall it's important for the parent to have some idea as to why the parent and . . . child . . . are involved in the system or involved in DSS and so if a parent is not able to articulate their understanding it's a concern because it speaks to insight and their overall knowledge about the process as a whole.

Hancock further found Respondent "did not seem invested nor to appreciate the efforts to make sure that her child was returned to her care." He based this finding on Respondent's unwillingness "to work with the system and the services required to do what it takes to . . . have the child return[ed] to [her] care."

Hancock performed two psychological assessments of Respondent, which showed, *inter alia*: (1) Respondent displayed immaturity and a lack of sophisticated development; (2) Respondent failed to understand accepting assistance from others "does not have to be an assault on who she is"; and (3) Respondent allowed herself to

[8] Hancock only assessed Respondent in regard to Susan, not Clint.

live in a chaotic environment, without understanding of how the environment would impact Susan. On 25 August 2016, Hancock told Respondent of the results of the assessments, but she "was disinterested." Since that date, Hancock had no further interactions with Respondent.

DSS next called Jennifer Smallwood, a permanency planning social worker with DSS. Smallwood began working on Respondent's case on 3 November 2015. At that time, the matters Respondent needed to address were "housing, family violence and discord, parenting skills as well as she had been referred to receive counseling services." To comply with her case plan, Respondent was to complete first[9] and mental assessments and comply with those recommendations, complete parenting classes, stay in contact with the social worker, obtain stable housing, and obtain a steady income.

In accordance with her case plan, Respondent completed the first mental health assessment, which recommended continued therapy. Respondent failed to obtain stable housing. Although Respondent received a Section Eight housing voucher, she never completed the necessary paperwork to obtain housing. However, Respondent did have steady employment. Following an initial termination from the program, Respondent completed parenting classes. Additionally, Respondent stayed

[9] A first assessment is a screen "to see if a parent is in need of substance abuse services[.]"

in contact with Smallwood and attended the supervised visitations with Susan and Clint.

However, prior to one review hearing, Respondent "had gotten into a physical altercation[.]" DSS referred Respondent to a support group, but she "failed to follow up" with the group. Although Respondent attended one intake assessment at Monarch, she failed to attend other sessions or maintain contact with the program. Respondent asserted she leased an apartment. However, DSS discovered Respondent's sister actually leased the apartment. On 21 October 2016, Smallwood told Respondent she needed to leave her sister's apartment, as her presence put her sister's residency at risk. Respondent told Smallwood she would live with her mother. Smallwood visited Respondent's mother's home on 22 October 2016; however, the house was unfit due to renovations. Although Respondent attended visitations with Susan and Clint, DSS had concerns due to "inappropriate" comments made during the visits. In Smallwood's opinion, Respondent failed to make sufficient progress on her case plan.

DSS rested. Respondent moved to dismiss the termination proceedings, and the court denied Respondent's motion.

Respondent called her sister, Tina. Although the two had issues in the past, they now got along well. Respondent sometimes stayed at Tina's apartment, but it was not Respondent's permanent home. Respondent next called her mother, Yvette.

Respondent lived with Yvette, and had for the preceding five months. Due to renovations at Yvette's home, the two sometimes stayed in a hotel.

Respondent testified on her own behalf. Although Respondent and her sister previously fought, they currently got along well. In 2017,[10] Respondent located housing, but "needed help with the deposit." Due to inability to pay the deposit, she failed to secure the housing. In the days before the hearing, Respondent secured an apartment. However, she could not move in until 1 June 2017. Respondent explained she had kids at a young age and can now provide for Susan and Clint. She submitted proof of the parenting classes she completed.

On 17 July 2017, the court entered an order terminating Respondent's parental rights to both Susan and Clint. The court concluded grounds existed to terminate Respondent's parental rights to Susan, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3). The court concluded grounds existed to terminate Respondent's parental rights to Clint, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). The trial court further determined terminating Respondent's parental rights to be in Susan's and Clint's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). On 27 July 2017, Respondent filed timely notice of appeal from the termination order.

II. Standard of Review

[10] Respondent did not give an exact date or month she located this housing.

"The standard for 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 Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984) (citation omitted). "If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court." *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (internal quotation marks and citation omitted). "The trial court's conclusions of law are fully reviewable *de novo* . . . ." *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation and quotation marks omitted), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

III. Analysis

Counsel for Respondent filed a no-merit brief on her behalf, pursuant to Rule 3.1(d) of the North Carolina Rules of Appellate Procedure. Counsel states after "a conscientious and thorough review of . . . all materials in the underlying case files[,]" he determined there "is no issue of merit on which to base an argument for relief and that this appeal would be frivolous." In accordance with Rule 3.1(d), counsel demonstrated he advised Respondent of her right to file written arguments in support of her appeal and provided Respondent with the necessary materials to do so. Respondent failed to file her own written arguments, and a reasonable time for her

to do so has passed. Counsel asks this Court to conduct an independent examination of the case for possible error.

After review, we are unable to find any possible prejudicial error by the trial court in its order terminating Respondent's parental rights. The termination order includes sufficient findings of fact, supported by clear, cogent, and convincing evidence, to support at least one statutory ground for termination. Pursuant to N.C. Gen Stat. § 7B-1111(a)(1), "[t]he trial court may terminate the parental rights to a child upon a finding that the parent has neglected the child." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003) (citing N.C. Gen. Stat. § 7B-1111(a)(1)). A neglected juvenile is defined, in relevant part, as "[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[.]" N.C. Gen. Stat. § 7B-101(15) (2017).

"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). However, when, as here, the child has been removed from his or her parent's custody such that it would be impossible to show the child is currently being neglected by his or her parent, "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." *In re*

Ballard, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). If a prior adjudication of neglect is considered, "[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." *Id.* at 715, 319 S.E.2d at 232 (citation omitted). Thus, where:

> there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless 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 or] her parents.

In re Reyes, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect. *In re D.M.W.*, 173 N.C. App. 679, 688-89, 619 S.E.2d 910, 917 (2005), *rev'd per curiam per the dissent,* 360 N.C. 583, 635 S.E.2d 50 (2006).

Here, the court previously adjudicated both Susan and Clint as neglected juveniles. Respondent's case plans required her to, *inter alia*, submit to mental health, substance abuse, and domestic violence assessments, obtain and maintain safe, consistent, and appropriate housing and income, and engage in an in-home parenting class. The trial court found because Respondent failed to complete her case plan such that DSS would recommend that the children be returned to her, Respondent failed to address the issues that led DSS to obtain custody over her children, and Respondent was not in a position to provide care for her children, there was a "high probability of the repetition of neglect." *See Ballard*, 311 N.C. at 713-15,

319 S.E.2d at 231-32. We conclude these findings are supported by clear and convincing evidence. Although Respondent made some progress on her case plan, *minimal* progress is insufficient to overturn a finding of probability of repetition of neglect. *See In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (citation and quotation marks omitted) (alteration in original) ("Relevant to the determination of probability of repetition of neglect is whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of [the] children."). Additionally, with regard to any conflicting evidence for Respondent's ability to obtain secure housing, the trial court was free to weigh this evidence. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (citation omitted) (stating in non-jury proceedings it is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom"). *See also In re White*, 81 N.C. App. 82, 90, 344 S.E.2d 36, 41 (1986) (considering a parent's "present inability to parent" or "failure to provide a living environment suitable" for children when determining probability of repetition of neglect).

Accordingly, the trial court properly concluded grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent's parental rights. Because we conclude grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) for both Susan and Clint, we need not address the other grounds determined by the trial court

with regard to Susan. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (citation omitted) (stating a finding of any of the separately enumerated grounds is sufficient to support termination).

Furthermore, the trial court's findings reflect due consideration of the dispositional factors in N.C. Gen. Stat. § 7B-1110(a) and a valid exercise of its discretion in assessing Susan's and Clint's best interests.

IV. Conclusion

For the foregoing reasons, we affirm the trial court's order terminating Respondent's parental rights to Susan and Clint.

AFFIRMED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).