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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1321

Filed: 19 June 2018

Cabarrus County, Nos. 13 JT 121-24

IN THE MATTER OF: A.B., C.B., J.B., A.B.

Appeal by Respondent-Mother from order entered 21 August 2017 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 31 May 2018.

Hartsell & Williams, PA, by H. Jay White and Austin "Dutch" Entwistle, III, for Petitioner-Appellee Cabarrus County Department of Human Services.

Mark L. Hayes for Respondent-Appellant mother.

The Huffman Law Firm PLLC d.b.a. Odin Law and Media, by Brandon J. Huffman, for guardian ad litem.

DILLON, Judge.

Mother appeals from an order terminating her parental rights to her minor children, A.B., C.B., J.B., and A.B. This case is before this Court a second time. A detailed factual background can be found in our prior opinion in this case, *In re A.B.*, ___ N.C. App. ___, 799 S.E.2d 445 (2017).

I. Background

On 22 October 2013, the Cabarrus County Department of Human Services ("DHS") filed petitions alleging that the children were neglected because of ongoing substance abuse and domestic violence by their parents.

On 22 September 2014, the trial court entered an order adjudicating the children as neglected and dependent juveniles.

On 15 December 2015,[1] the trial court entered an order which relieved DHS of further reunification efforts with Mother after concluding she had made insufficient progress on her case plan.

On 5 July 2016, the trial court entered an order concluding that Mother's parental rights were subject to termination for (1) neglect and (2) willful failure to make reasonable progress to correct the conditions that led to the children's removal from the home over three years earlier. N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2017).

Mother timely appealed to this Court. On appeal, this Court held that the trial court's findings of fact were insufficient to support its conclusion that grounds existed to terminate Mother's parental rights, because the findings failed to address her circumstances as of the time of the termination hearing. *In re A.B.*, ___ N.C. App. at ___, 799 S.E.2d at 452. The termination order was vacated and remanded so that the trial court could enter additional findings. *Id.* Our opinion further stated that the trial court was permitted to hear additional evidence on remand. *Id.*

[1] The order resulted from a hearing conducted on 8 October 2015.

The trial court elected to not hear any additional evidence on remand. Rather, on 21 August 2017, the court entered a new termination order with additional findings as to Mother's circumstances at the time of the termination hearing. Mother's parental rights were again found to be subject to termination on the grounds of neglect and failure to make reasonable progress. Mother timely appealed.

II. Analysis

Mother argues in this second appeal that the trial court erred by concluding that grounds existed to terminate her parental rights. We disagree.

"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). "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 citations omitted), *appeal dismissed*, 362 N.C. 235, 659 S.E.2d 433 (2008).

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). 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).

> In determining neglect, the court must consider the fitness of the parent to care for the child *at the time of the termination proceeding*. Although evidence of past neglect is admissible, [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. This is especially true where the parent has not had custody of the child for quite some time.

In re G.B.R., 220 N.C. App. 309, 316, 725 S.E.2d 387, 392 (2012) (emphasis in original) (internal quotation marks and citations omitted).

> [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).

Our prior opinion indicated that the trial court failed to make sufficient findings as to Mother's circumstances at the time of the termination hearing. *See In re A.B.*, ___ N.C. App. at ___, 799 S.E.2d at 452. On remand, the trial court incorporated its findings and conclusions from a permanency planning order entered 10 March 2016 and also added the following findings of fact:

> 54. In addition to taking judicial notice of prior adjudications and the hearings cited above, specifically incorporating those findings of fact from the Permanency Planning hearing held on February 11, 2016 after service of process of the Petition for Termination of Parental

Rights on Mother, the Court finds the following facts by clear, cogent, and convincing evidence, supporting a termination of mother's parental rights at the time of hearing:

a. The minor children have been in placement for over thirty-one months.

b. Mother has lived at [the same address] since August or September of 2015. There has been no electricity or water at the residence since at least December 2015. On May 11, 2016, [DHS] spoke with Duke Energy and confirmed that there has been no power to the address since it was disconnected in December and a balance remains owed by Mother. Also on May 11, 2016, [DHS] spoke with the water company that water service has never been turned on at the stated address.

c. Mother's residence must be accessed through the residence of other individuals. Mother has refused to provide information at any point about the identity of the individuals that share access to the residence until the time of hearing.

d. Mother has never satisfied the parenting requirements recommended by [DHS]. Mother completed her court-ordered parenting courses . . . [h]owever, [the parent educator] could not provide any assistance to the family as a result of the "dysfunctional dynamics in the family."

e. [DHS] has been unable to maintain contact with Mother or verify her employment or work schedule. Mother does not currently have a set schedule and is either unable or unwilling to verify her employment or schedule.

f. Mother's schedule as a truck driver is irregular and erratic, and she does not know her routes or timing until she drops off one load and picks up the next. Mother has no way to maintain a stable or suitable day-to-day living environment for four children with no advance knowledge

of her schedule. Mother obtained her commercial driver's license in October 2015. She is employed full-time, but has not confirmed or failed to provide her employment information upon request to [DHS], including her work schedule, even after the termination of parental rights proceeding was commenced.

g. Mother is aware of steps she could take to find a job and schedule more suitable for caring for her children, but has failed to do so in the thirty-one months they have been in custody and the seven months since the filing of the petition to terminate. Mother says she has had no reason to find a local job prior to hearing and has made no effort to demonstrate she can maintain a stable job with a schedule suitable for raising minor children.

h. Mother admits a history of domestic violence with Father that she has allowed to occur in front of the children with a pattern of inaction. Mother has chosen not to protect the children from witnessing domestic violence over years of abuse.

i. Mother claims to have a substantial network of family and friends willing to help her take care of the children, but admits that she did not turn to any of those individuals or relatives for assistance during the years of violence the children were exposed to.

j. As of the time of hearing, Mother had not provided [DHS] with any possible placements and refused to provide the names of the family members living in the residence she shared. Mother did not want to provide the Court with the names of individuals she stays with when she is in town on the weekends and had not provided any such information to [DHS] to evaluate living arrangements.

k. As of July 2015, Mother complied with the recommendation of her assessment with Genesis, which consisted of six individual therapy sessions.

> l. Mother has not tested positive for marijuana or any other illegal controlled substance since the termination proceeding was filed in this matter.
>
> m. The only support payments Mother has made for the minor children since the filing of the petition have been through wage withholding. Prior to the implementation of wage withholding, the only child support payments made by Mother have been involuntary, whether by lien, Order to Show Cause, or bond. Mother is current with her child support payments on the date of the hearing in this matter due to wage withholding from her paycheck.

These findings reflect the trial court's concern with Mother's lack of progress in the areas of housing and employment. Mother argues that these findings are either unsupported by the evidence or irrelevant.

A. Housing

Mother acknowledges that the trial court accurately found that her proposed housing lacked electricity and water. But she contends that fact is immaterial, because she testified that she had the means to turn them back on if the children were returned to her. She argues that she had no obligation to turn on these utilities, so long as she did not have any prospect of having the children returned to her care in the foreseeable future. *See In re A.G.M.*, 241 N.C. App. 426, 441-42, 773 S.E.2d 123, 134 (2015) ("DSS has failed to demonstrate how Respondent's living conditions were inappropriate or harmful to the children while . . . Respondent was without any legitimate expectation that she would obtain overnight visitation rights, much less custody of the children, in the immediately foreseeable future.").

Unlike the respondent in *A.G.M.*, who had only been subject to a case plan requiring her to obtain housing for three months prior to the termination hearing, *see id.* at 441, 773 S.E.2d at 134, Mother had been required to obtain and maintain adequate housing for more than two years after the children were adjudicated neglected and dependent. Moreover, unlike in *A.G.M.*, the residence at issue in this case was the actual residence intended to provide adequate housing for the children. The trial court was not required to credit Mother's testimony that she could have turned on the utilities if the children were returned to her. *See In re Whichard*, 8 N.C. App. 154, 160, 174 S.E.2d 281, 285 (1971) ("As the trier of the facts, the court ha[s] the duty to determine the weight and credibility to be given to the evidence presented, and [it] could believe or disbelieve the testimony of any witness."). The court's findings show that it gave more weight to the fact that electrical service was involuntarily cut off, and that water service was never started, than it gave to Mother's explanation. The trial court also noted DHS's concern that the proposed residence was accessible[2] from another apartment downstairs and that Mother had failed to provide the names of the individuals living in that apartment. This finding was supported by testimony from the DHS social worker. As noted in our prior

[2] Mother correctly argues that the portion of the trial court's finding that states the apartment *must* be accessed through the downstairs apartment is unsupported, and we disregard that portion of the finding. However, we still consider Mother's failure to provide the names of the individuals relevant to the appropriateness of Mother's apartment, and we will consider that portion of the finding. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240-41 (2006).

opinion, Mother "claimed her aunt had refused to authorize the disclosure" of the adults living in the downstairs apartment. *In re A.B.*, ___ N.C. App. at ___, 799 S.E.2d at 452. However, the trial court was again free to disregard or give little weight to this explanation. *See In re Whichard*, 8 N.C. App. at 160, 174 S.E.2d at 285.

B. Employment

The trial court's findings regarding Mother's employment situation are likewise supported by the evidence.

As found by the trial court, Mother's employment schedule was erratic and provided her with no advance notice of where and when she would have to be away from home. She acknowledged that taking care of the children would require her to get "a local job," but she felt she had no reason to pursue such a job until the children were returned to her. The trial court was permitted to weigh Mother's refusal to obtain more suitable employment when determining whether a repetition of neglect was likely. As previously noted, the children had already been removed from the home for thirty-one (31) months as of the time of the termination hearing. The court was not required to extend this period simply because Mother might transition to suitable employment at some point in the future.

The trial court's findings also acknowledged that Mother had made progress on various aspects of her case plan, including by recently passing a series of drug screens and completing six recommended therapy sessions. But the trial court found

this progress was insufficient, in light of other factors, to permit the children to be returned to Mother in the foreseeable future. *See In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224-25 (1995) ('Extremely limited progress is not reasonable progress.").

III. Conclusion

Based on the evidence presented before it, the trial court made sufficient findings to support its determination that, as of the time of the termination hearing, Mother had failed to sufficiently correct the conditions which led to the children's removal. We conclude that the trial court did not abuse its discretion when it determined that termination of Mother's parental rights was in the best interest of the juveniles. *See Matter of D.L.W.*, 368 N.C. 835, 846, 788 S.E.2d 162, 169 (2016). Because we have found that termination was proper on the ground of neglect, we need not address Mother's argument as to the remaining ground for termination found by the trial court. *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005).

AFFIRMED.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).