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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-187

Filed: 7 August 2018

Guilford County, Nos. 15 JT 450-51, 453-54

IN THE MATTER OF: C.W-J.H., J.G.H., A.L-F.H., J.E-B.H.

Appeal by respondent from order entered 6 November 2017 by Judge Tonia A. Cutchin in Guilford County District Court. Heard in the Court of Appeals 26 July 2018.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

J. Thomas Diepenbrock for respondent-appellant mother.

Everett Gaskins Hancock LLP, by Katherine A. King and James M. Hash, for guardian ad litem.

DAVIS, Judge.

E.H. ("Respondent") appeals from an order terminating her parental rights to her minor children C.W-J.H. ("Charles")[1], J.G.H. ("Jacob"), A.L-F.H. ("Audrey"), and

[1] Pseudonyms and initials are used throughout this opinion for ease of reading and to protect the juveniles' privacy.

J.E-B.H. ("Jennifer") (collectively "the children"). After a thorough review of the record and applicable law, we affirm the trial court's order.

Factual and Procedural Background

On 19 November 2015, the Guilford County Department of Health and Human Services ("DHHS") obtained non-secure custody of the children and filed petitions alleging that they were neglected and dependent juveniles. The petitions alleged that DHHS had an extensive history with Respondent dating back to 2003 due to her mental health and substance abuse issues. In 2006, DHHS assumed custody of Respondent's first child, and she eventually relinquished her parental rights to that child. DHHS began providing in-home services to the family in 2013.

The petitions further alleged that DHHS received three child protective services reports regarding the family from November 2014 to May 2015. The reports included allegations of unsafe and unsanitary living conditions, domestic violence, and substance abuse by Respondent and the children's father.[2] On 23 April 2015, the children were voluntarily placed in the care of maternal relatives by their parents because the utilities in the parents' home were disconnected. When those relatives were no longer able to care for the children, they went to live with their paternal grandmother.

[2] The children's father is not a party to this appeal.

On 9 November 2015, Respondent "became irate and began cursing and acting out aggressively" during a visit with the children. She exhibited similar behavior at another visit three days later. On 18 November 2015, DHHS held a team decision meeting to discuss Respondent's erratic behavior.

After a hearing on 13 January 2016, the trial court entered an adjudication order concluding that the children were neglected and dependent. On 5 May 2016, the court entered a disposition order. In its order, the trial court (1) continued custody of the children with DHHS and sanctioned their placement in foster care; (2) awarded Respondent supervised visitation with the children; (3) set the plan for the children as reunification with Respondent; and (4) directed Respondent to comply with her DHHS case plan, which included treatment for mental health, domestic violence, and substance abuse. The case plan further ordered Respondent to obtain adequate housing, take parenting classes, and demonstrate her ability to provide financial support for the children.

The trial court subsequently held a series of permanency planning hearings. On 17 April 2017, the court entered a "Permanency Planning Review Hearing Order" in which it found that it was not possible for the children to return to Respondent's home within the next six months. The order listed, *inter alia*, a number of barriers to reunification, including (1) Respondent giving birth to another child; (2) Respondent's "on/off" relationship with the children's father, implicating domestic

violence issues; (3) Respondent "having only recently begun to address [her] substance abuse issues[;]" and (4) Respondent's continued need to address her mental health and parenting skills. The trial court ordered that the reunification plan be changed to adoption and directed DHHS to file a petition to terminate Respondent's parental rights.

On 19 May 2017, DHHS filed a petition to terminate Respondent's parental rights to the children on the grounds of neglect, failure to make reasonable progress, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2), (6) (2017). Following a hearing on 10 October 2017, the trial court entered an order on 6 November 2017 holding that all three grounds alleged in the petition existed to terminate the parental rights of Respondent. Respondent filed a timely notice of appeal.

Analysis

Respondent argues that the trial court erred in terminating her parental rights without clear, cogent, and convincing evidence of neglect. We disagree.

"The 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 (citation and quotation marks omitted), *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004). Unchallenged findings are presumed to be

supported by competent evidence and are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009).

In the present case, the trial court concluded grounds existed to terminate Respondent's parental rights on the basis of, *inter alia*, neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). N.C. Gen. Stat. § 7B-1111(a)(1) lists neglect as one of the enumerated grounds for termination of parental rights and provides that a trial court may terminate a parent's rights if it determines that the juvenile is a neglected juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). N.C. Gen. Stat. § 7B-101 defines a neglected juvenile as one who "does not receive proper care, supervision, or discipline" from a parent or caretaker or "who lives in an environment injurious to the juvenile's welfare[.]" 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). However, when the parent has not had custody of the child "for a significant period of time prior to the termination hearing, . . . a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect." *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citations and quotation marks omitted). If prior 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." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted).

Respondent challenges the following four findings of fact used by the trial court to support the neglect determination contained in its 6 November 2017 order:

> 18. [Respondent] has provided a copy of her lease agreement. She is current on her rent at her two bedroom house but does not have any furniture for the children, therefore the children are not in a position where they could live in her house as of today. [Respondent] does receive income of $735.00 per month for SSI, and her rent is $750.00 per month. Her family provides financial support including $400.00 from [Respondent's mother], $150.00 per month from [Respondent's godfather]; $125.00 from [Respondent's godmother] and occasionally $300.00 per month from [Respondent's cousin]. She also reports that she has received a settlement as [the] result of a motor vehicle accident of approximately $14,000.00 earlier in 2017, however she did not provide notice of that settlement to [DHHS] and has not provided any written verification to [DHHS] as of today's date. She does not have adequate income to meet the needs of her children without the assistance of others. She is not in compliance with this portion of her case plan.
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> 20. [Respondent] did complete the parenting psychological evaluation and she did complete the [Parent Assessment Training and Education ("PATE")] program. However, she has not used skills that she was to have learned in the PATE program to manage visits on her own with all of her children at one time. By way of example, in April of 2017 [DHHS] witnessed a fight between the minor children, and [DHHS] had to intervene during the visit to

stop the conflict. In addition, on a June 6, 2017 visit [Respondent] informed the minor children that [DHHS] was not their family, that [DHHS] was trying to take the children away from [Respondent], and asked the children not to cooperate with [DHHS]. [Charles] started crying during the visit and extra security was dispatched. [Respondent] later apologized for her behavior. The children have been in DHHS custody since Nov 19, 2015, and [Respondent] is still receiving only supervised visitation. She is not in compliance with this portion of her case plan.

. . . .

23. [Respondent] did complete her substance abuse assessment . . . in January of 2016. She remained compliant with drug screens until she tested positive on April 17, 201[6]. She refused to submit to drug screens on April 25, May 24, and Aug 16 of 2017, even though she was informed that a refusal would be considered a positive. [Respondent] responded that, "You all know I don't do drugs, so why do I need to take a drug screen?" As of Dec 7, 2016, [Respondent] was not making herself available to the [Assertive Community Treatment Team] and she was discharged. She is not in compliance with the substance abuse portion of her case plan.

. . . .

25. [Respondent] receives $735.00 per month for Social Security Income and has been receiving SSI income since she was eight years of age. [Respondent] informed this Court today that she received a settlement pursuant to a motor vehicle accident in the amount of $14,000.00, but she has not provided any written information to [DHHS]. This is not adequate to care for her children. She is not in compliance with this portion of her case plan.

On appeal, Respondent primarily argues that the concluding characterization contained in each of the challenged findings of fact stating that she is not in compliance with her case plan is inaccurate. We disagree.

Finding of Fact No. 18 addresses the "Housing/Environment/Basic Physical Needs" component of Respondent's case plan and Finding of Fact No. 25 addresses the "Income" component. A DHHS social worker testified at the 10 October 2017 termination hearing that although Respondent had obtained adequate housing, her monthly rent exceeded her monthly income. She further testified that while Respondent had provided letters from family members stating their willingness to send her financial support each month, these letters could not be considered documented income. Consequently, the social worker concluded that Respondent could not "meet the basic physical needs [of] herself and her children," nor was she "capable or able to take care of the four children" based on her income. This testimony supports Finding Nos. 18 and 25.

Finding of Fact No. 20 addresses the "Parenting Skills" portion of Respondent's case plan. In her appellate brief, Respondent focuses on the portion of Finding No. 20 reflecting her completion of a psychological evaluation, her completion of the PATE program, and attendance at scheduled visitations. She contends that these accomplishments render her in substantial compliance with this portion of her plan. However, the social worker also testified that Respondent failed to progress beyond

supervised visitation because she was unable to control her children during her visits with them. Consequently, she concluded that Respondent was "not in total compliance with that component of her case plan." This testimony supports Finding No. 20.

Finding of Fact No. 23 addressed the "Substance Abuse" portion of Respondent's case plan. Once again, Respondent focuses on the favorable aspects of this factual finding while ignoring the unfavorable portions. In her appellate brief, she directs our attention to her completion of a substance abuse treatment program and her initial negative drug screens. Respondent also attempts to excuse her refusal to submit to drug tests as requested by DHHS on 25 April 2017, 24 May 2017, and 16 August 2017 by noting that she submitted negative drug screens to her probation officer. However, the social worker testified that she specifically informed Respondent that her failure to submit to drug screens requested by DHHS would violate the terms of her case plan. Respondent nevertheless refused to submit to the drug screens. Accordingly, the social worker stated that Respondent was "not in total compliance" with this portion of her case plan. This testimony supports Finding No. 23.

Thus, we conclude that all of the trial court's challenged findings are supported by competent evidence. In addition, Respondent has not contested the trial court's findings that she had not taken the medications meant to treat her mental health

issues or seen her therapist for several months as of the 10 October 2017 termination hearing. Taken together, these findings reflect that the issues leading to the children's neglect adjudication were not adequately addressed, such that a likelihood of repetition of neglect existed if the children were returned to Respondent's care. *See In re C.M.P.*, __ N.C. App. __, __, 803 S.E.2d 853, 859 (2017) ("A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." (citation omitted)).

Accordingly, we affirm the trial court's order terminating Respondent's parental rights on the ground of neglect. Because we have determined that termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) was proper, it is unnecessary to address the remaining grounds 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) ("[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." (citation and quotation marks omitted)), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

Conclusion

For the reasons stated above, we affirm the trial court's order terminating Respondent's parental rights.

AFFIRMED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).