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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1343

Filed: 7 August 2018

Johnston County, Nos. 13 JT 64–65, 89

IN THE MATTER OF: T.S.B.-S., A.A.S., T.S.B.

Appeal by respondent-mother from orders entered 27 September 2017 by Judge Resson O. Faircloth in Johnston County District Court. Heard in the Court of Appeals 21 June 2018.

Holland & O'Connor, P.L.L.C., by Jennifer S. O'Connor, for petitioner-appellee Johnston County Department of Social Services.

Patrick Lineberry for respondent-appellant mother.

Mobley Law Office, P.A., by Marie H. Mobley, for guardian ad litem.

DIETZ, Judge.

Respondent appeals from orders terminating her parental rights to her three minor children. As explained below, the trial court's conclusion of neglect is supported by sufficient findings of fact and those findings, in turn, are supported by clear and convincing evidence in the record. In addition, the court's best interests determination contained sufficient findings and was not an abuse of discretion. Accordingly, we affirm the trial court's orders.

Facts and Procedural History

Respondent is the mother of three young children, Amy, Trina, and Trevor.[1] In 2012, Respondent contacted the Johnston County Department of Social Services to report that Trina's father had indicated he might harm Trina. Trina's father threatened to throw Trina down the stairs, break her neck, and dig a hole in the woods behind Respondent's home and throw Trina in it. Trina's father also repeatedly called Trina fat and at one point held his foot over her head and threatened to kick her in the head.

Trina's father also had a history of abusing Respondent. He sent Respondent text messages threatening to kill her. He also pleaded guilty to assaulting her.

When DSS spoke to Trina's father in late 2012, he did not deny threatening to harm his child. He explained that he did not want anything to do with Respondent or Trina, and that Respondent was "forcing him to be a family with her and the children" when he did not want to. At the time, Respondent was pregnant with Trevor, her second child with Trina's father.

After a court-ordered evaluation, a psychologist diagnosed Trina's father with PTSD, as well as possible bipolar II disorder and anti-social personality disorder and concluded that he posed a risk of violence. The psychologist also noted that Trina's father "did not report an interest in parenting his daughter, but he did report an

[1] We use pseudonyms to protect the juveniles' identities.

interest in the child's mother attempting to force his hand. This will likely result in an ongoing conflict between the parents, which ultimately will be emotionally unhealthy for the child." The psychologist concluded that "as long as the child's mother continues to force [Trina's father] into child support, contact or anything, he will continue to resist, and his resistance will likely become progressively more violent."

Respondent would not accept that Trina's father did not want to be involved with her or the children. Respondent's relationship with DSS deteriorated because she believed the focus should be on Trina's father and reuniting him with Respondent and the children.

Then, in March 2013, while Respondent was still pregnant, a DSS worker witnessed Trina's father tell Respondent to "give up" the baby or he was going to kill the baby. Respondent told Trina's father not talk like that in front of DSS because that is why DSS "won't go away." Respondent downplayed the risk Trina's father posed to her and her children and, again in a DSS worker's presence, discouraged Trina's father from seeking psychiatric care because she felt he did not need it because he was not "coo-coo." As part of its safety assessment, DSS instructed Respondent not to contact Trina's father or permit the children to see him.

Later that month, police responded to a call at Respondent's home. Trina's father was present along with the children, and Respondent and Trina's father had

an argument because he refused to go with Respondent to a doctor's appointment for Trina.

Respondent's relationship with DSS further deteriorated over the next several months. She often refused to let DSS workers into her home. At one point, she showed DSS workers a shotgun she kept in her car and told them she could use the firearm as protection against Trina's father if necessary.

After the trial court ordered Respondent's children to be placed in non-secure custody through DSS, Respondent went missing for two days and only surrendered her children to DSS after requests by law enforcement and Respondent's counsel.

In May 2013, Respondent gave birth to Trevor. Respondent initially told her obstetrician that she was afraid Trevor's father—who had previously threatened to kill both Trina and Trevor—would harm the child. She wanted the child placed in an undisclosed location. But Respondent later contacted Trevor's father from the hospital and encouraged him to come see the child, despite the father's history of violence, his threats against Respondent and her children, and the DSS assessment prohibiting this contact. Respondent also tried to hide Trevor's birth from DSS. After DSS learned of Trevor's birth, it took custody of Trevor as well.

In July 2013, the trial court adjudicated the children as neglected and dependent. After a series of permanency planning hearings, the trial court granted Respondent supervised visitation through DSS, and then limited unsupervised

visitation. During this time, Trina's and Trevor's father also appeared in court and requested that his parental rights be terminated. He told the court that he had no interest in raising his children or being involved with Respondent.

When the trial court granted Respondent unsupervised visitation, the court reminded her that Trina's and Trevor's father could not participate in any visitation and that there was a no-contact order in place prohibiting her from taking the children to see their father.

Nevertheless, Respondent continued to see the father. In December 2014, Respondent took the children to the Johnston County Jail where she visited the father. Respondent and the father got into an argument during the visit and the father banged the glass separating them with his fist. Respondent also made additional plans to visit the father.

DSS later learned that Respondent had contacted the father and taken the children to the jail with her. When they confronted Respondent, she downplayed the threat he posed to her and the children, told DSS that it was unrealistic for DSS to expect her not to communicate with the father of her two youngest children, and told DSS that the father wanted to be part of the children's lives and they were trying to come to an understanding.

DSS ultimately petitioned to terminate Respondent's parental rights. At the hearing, Respondent testified that there was never any domestic violence between

her and Trina's and Trevor's father, and that the father never threatened to harm the children, despite everything that had happened in the past.

The trial court found this testimony not credible and contradicted by various testimony and records from the earlier juvenile proceedings. The court found that "the mother, through her testimony in this proceeding, has attempted to re-write the history of this case and her family's situation, in an attempt to portray herself and her family in a more positive light."

The court terminated Respondent's parental rights based on neglect and willful failure to correct the conditions leading to the removal of the juveniles. Respondent timely appealed.

Analysis

I. Sufficiency of the Evidence Supporting the Court's Findings

Respondent first challenges the sufficiency of the evidence supporting various findings by the trial court. As explained below, because the court's findings concerning Respondent's contact with Trina's and Trevor's father, and her unwillingness to recognize the danger this poses to her and her children, support the trial court's adjudication of neglect, we focus our analysis on the evidence supporting those findings.

A proceeding to terminate parental rights involves two separate phases: (1) an adjudicatory phase, where the court determines if any statutory grounds exist to

terminate parental rights; and (2) a dispositional phase, where the court determines if termination is in the juvenile's best interests. *In re D.H.*, 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014). This Court reviews the trial court's adjudicatory decision to determine whether clear and convincing evidence supports the findings of fact and whether the findings support the legal conclusions. *In re S.Z.H.*, __ N.C. App. __, __, 785 S.E.2d 341, 345 (2016). If there is clear and convincing evidence supporting the court's findings, they are binding on appeal even if there also is evidence for a contrary finding. *Id.* Unchallenged findings of fact are binding on this Court and cannot be reviewed. *In re J.M.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006).

N.C. Gen. Stat. § 7B-1111(a)(1) permits a trial court to terminate parental rights upon finding that the parent has neglected the juvenile. A neglected juvenile is one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15). A trial court may adjudicate a child neglected if there is clear and convincing evidence of past neglect and of "a probability of repetition of neglect if the juvenile were returned to her parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000).

Exposing a child to dangerous situations, including persons who threaten the child's safety or abuse the parent, can constitute neglect. *In re D.B.J.*, 197 N.C. App. 752, 755, 678 S.E.2d 778, 781 (2009). Likewise, a parent's refusal to recognize

domestic violence or threats to the child's safety and take steps to address it can support an adjudication of neglect based on the probability of repetition. *Id.* at 756, 678 S.E.2d at 781.

Here, the trial court made a series of findings concerning the threats of serious physical harm and death made by Trina's and Trevor's father against his own children, and his history of abuse and violence against Respondent. The court also found that the father had mental health issues that posed a risk to the children due to his failure to address the issues through counseling or treatment.

The court found that despite extensive counseling concerning these issues, Respondent continued to downplay the risks posed by Trina's and Trevor's father—to the extent that she attempted to "re-write history" in her sworn testimony by lying about the father's pattern of violence and threats of violence. Based on these findings, the court found by clear and convincing evidence that "the mother would not currently be able to provide a safe environment or provide proper care and supervision for the children" and that "the children would be at risk of repetition of neglect if returned to the mother's care."

Respondent argues that these findings are not supported by clear and convincing evidence because there was no evidence that, after May 2013, Respondent had any interest in a relationship with the father or intended to expose the children to the father. We disagree. The record shows that Respondent visited the father in

jail in December 2014 and took the children with her, and that she had plans to visit the father additional times. Moreover, when DSS confronted Respondent about the visit, Respondent downplayed the risks the father posed to her and the children and stated that she wanted the father to be part of the children's lives. Finally, in her testimony at the termination hearing, Respondent again downplayed the risks the father posed and denied his history of violence. Respondent also testified that she did not believe DSS ever should have been involved with her children. The trial court found this testimony not credible.

Taken together, this is clear and convincing evidence supporting the trial court's findings that Respondent had a continuing interest in a relationship with Trina's and Trevor's father, and that she refused to acknowledge the danger to her and her children from a relationship with the father, which in turn posed a continuing risk to her children's safety. To be sure, Respondent presented competing evidence on these issues, but our role on appeal is not to reweigh the evidence but only to determine if there is clear and convincing evidence supporting the trial court's findings. *In re P.A.*, 241 N.C. App. 53, 57, 772 S.E.2d 240, 244 (2015). As explained above, there is.

Respondent also argues that there was no evidence the children actually saw their father when Respondent visited him in the Johnston County Jail. Even if this were correct, it would not impact the trial court's ultimate finding because, as

explained above, there was evidence from which the trial court properly found that Respondent intended to expose the children to Trina's and Trevor's father in the future, thus placing them at risk. Accordingly, we hold that there was sufficient clear and convincing evidence to support the trial court's ultimate finding that Respondent "would not currently be able to provide a safe environment or provide proper care and supervision for the children" and that "the children would be at risk of repetition of neglect if returned to the mother's care."

II. Sufficiency of the Trial Court's Conclusions of Law

Respondent next challenges the trial court's conclusion of neglect, arguing that there were no findings of ongoing neglect or a probability of repetition of neglect sufficient to support those conclusions of law. Again, we disagree. The trial court expressly found both a history of past neglect and a risk of repetition of that neglect if the children were returned to Respondent. And, as explained above, those findings are supported by clear and convincing evidence in the record. Accordingly, we likewise uphold the trial court's conclusions of law.

Because we hold that the trial court's findings and conclusions of neglect are proper based on the inability to recognize and address the risk posed by exposing the children to Trina's and Trevor's father, we affirm the trial court's adjudication on that basis and need not address the other adjudicatory grounds in the court's order. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426–27 (2003).

III. Best Interests Determination

Finally, Respondent argues that the trial court's best interests findings are infirm because the court merely recited the opinions of the social worker and guardian ad litem and failed to exercise its role as fact finder to make its own best interests determination. We disagree.

If the trial court adjudicates the existence of at least one ground for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a), the court enters the dispositional phase to determine whether termination is in the juvenile's best interests. N.C. Gen. Stat. § 7B-1110. This Court reviews a trial court's dispositional decision for abuse of discretion. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *S.Z.H.*, __ N.C. App. at __, 785 S.E.2d at 345.

Here, the trial court made specific findings on each of the relevant dispositional factors listed in N.C. Gen. Stat. § 7B-1110(a) and then expressly found that "the Court determines that it is in the best interest of the minor child[ren] that any and all rights of the biological mother are terminated and that a permanent plan of care be provided for [the children]." Our review of the hearing transcript and the court's best interests findings satisfies us that the trial court made its own independent determination of

the children's best interests and did not merely recite determinations made by third parties. Accordingly, we reject Respondent's argument.

Conclusion

For the reasons discussed above, we affirm the trial court's orders.

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).