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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-280

Filed: 6 November 2018

Orange County, No. 15 JT 88

IN THE MATTER OF: A.P.

Appeal by respondent-mother from order entered 29 November 2017 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 4 October 2018.

Holcomb & Stephenson, LLP, by Deana K. Fleming, for petitioner-appellee Orange County Department of Social Services.

Mark L. Hayes for respondent-appellant mother.

Penry Riemann PLLC, by Neil A. Riemann, for guardian ad litem.

BRYANT, Judge.

Respondent appeals from an order terminating parental rights to her minor child A.P. ("Asa").[1] The father is not a party to this appeal. We affirm.

Asa was born in December 2012. On 11 February 2013, the Moore County Department of Social Services received a report that Asa had a healed rib fracture that was unexplained. There were also concerns for how the parents responded to a fever that Asa had. Moore County Department of Social Services was given custody,

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading.

and both parents were identified as perpetrators on the North Carolina Responsible Individuals List. Asa was returned to the parents' custody in January 2014 after the parents completed services, and the family subsequently relocated to Orange County.

On 18 July 2014, the Orange County Department of Social Services ("DSS") received a report that the father had left one-year-old Asa and his three-year-old half-sister home alone while respondent was at the hospital giving birth to another child. DSS learned during its investigation that law enforcement had responded to three domestic violence disputes in the home in the prior month. On 9 June 2015, DSS conducted an assessment after learning that Asa was found unsupervised on the side of Highway 54. On 4 October 2015, law enforcement responded to a domestic dispute between the parents. DSS learned that between February and July 2015 law enforcement had responded to the home six times regarding domestic violence incidents.

On 8 October 2015, DSS filed a petition alleging that Asa was a neglected and dependent juvenile. In addition to the above incidents, the petition noted that a DSS social worker had twice observed respondent and the father requiring Asa to sit on a child's potty seat during the entirety of a home visit and ordering the children to their rooms when they asked about their lunch. DSS obtained nonsecure custody the same day. Following a 3 December 2015 hearing, the trial court entered an order on 28 December 2015 adjudicating Asa to be neglected and dependent and ordering

respondent to have no contact with the father, comply with treatment recommendations from a mental health assessment, and work with the Compass Center to learn about domestic violence and its impact on children. The trial court held a permanency planning hearing on 2 June 2016, after which the court entered an order on 14 July 2016 establishing a primary permanent plan of reunification with a secondary plan of adoption. Following a subsequent permanency planning hearing on 20 April 2017, the court entered an 11 May 2017 order changing the primary permanent plan to adoption with a secondary plan of reunification.

On 5 July 2017, DSS filed a motion to terminate parental rights, alleging as grounds to terminate respondent's rights: (1) neglect; (2) dependency; (3) willful failure to make reasonable progress in correcting the conditions leading to the juvenile's removal; and (4) willful failure to pay a reasonable portion of the cost of care of the juvenile. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6) (2017). The trial court held a hearing on the motion on 6 October 2017, after which the court entered an order on 29 November 2017 terminating respondent's parental rights on the grounds of neglect, willful failure to make reasonable progress, and dependency. Respondent filed written notice of appeal on 21 December 2017.

Respondent contends that the trial court erred in concluding that grounds existed to terminate her parental rights to Asa. We conclude that the trial court correctly adjudicated the existence of neglect.

For purposes of terminating parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), a "neglected juvenile" is defined in part as one who "does not receive proper care, supervision, or discipline from the juvenile's parent, . . . or who is not provided necessary medical care; or who is not provided necessary remedial care; 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 is "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, if the juvenile is not in the parent's custody at the time of the hearing, a finding of neglect may be based on "a showing of a past adjudication of neglect and . . . clear and convincing evidence [of] a probability of repetition of neglect if the juvenile were returned to the parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000). The court must look to evidence of changed circumstances and "the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re J.K.C.*, 218 N.C. App. 22, 29, 721 S.E.2d 264, 270 (2012) (emphasis in original).

The standard of review on appeal of a termination order is whether the trial court's findings of fact are supported by "clear, cogent and convincing evidence" and

whether the conclusions of law are supported by the findings of fact. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000). A trial court's conclusions of law that grounds exist to terminate parental rights are reviewed *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

In this case, after reciting the facts relating to the trial court's previous adjudication of Asa as a neglected juvenile, the court made the following findings in support of its conclusion that neglect existed as a ground to terminate respondent's parental rights:

> 15. The juveniles' parents have a long history of being hostile and resistant towards professionals, including law enforcement, hospital staff, and social workers.
>
> 16. On 13 July 2015, the juvenile's brother . . . died as a result of a genetic medical disorder affecting the immune system, Hemophagocytic lymphohitoiocytosis (HLH). The juvenile was born with the same medical condition.
>
> 17. Following a bone marrow transplant when he was six month's [sic] old, the juveniles' [sic] current medical diagnosis is chronic graft vs. host disease post bone marrow transplant.
>
> 18. The juvenile has appointments at UNC Hospital once per week to receive intravenous steroid injections to stabilize his immune system. . . .
>
> 19. The juvenile has extreme impulsivity, significant aggression, and often presents with a lot of yelling and screaming. The juvenile's behavioral challenges may occur in part as a result of his prescribed steroid regimen, which is necessary to address his medical condition.

20. [DSS] entered into a Family Services Agreement with Respondent mother, requiring her to complete activities to resolve the safety issues. Many of the activities were recommended in a psychological evaluation and were ordered by the court. Respondent mother was required to:

a. Participate in domestic violence education and support – she participated in twenty sessions over a nine-month period. Her participation was inconsistent, and there was a two-month period in which she did not attend at all.

b. Participate in individual therapy – Respondent mother participated in some individual therapy sessions at Carolina Outreach between November 2015 and May 2016 when she moved to Troy, NC. She did not re-engage in therapy until May 2017. Respondent mother participated fairly regularly in therapy from May 2017 until August 2017, only missing two appointments in this three-month period.

c. Parenting – Respondent mother completed the ten-sessions offered by the Family Crisis Center in Troy on 04 April 2017. She often failed to do her assigned homework and sometimes forgot her materials.

d. Psychological evaluation – In March 2016, this Court ordered Respondent mother to participate in a psychological evaluation. Respondent mother participated in the evaluation, which was completed in May 2016.

e. Dialectical Behavioral Therapy [("DBT")] – Respondent mother participated in several DBT sessions, but did not complete the curriculum offered by Daymark. Completion would require between 6 and 18 months of consistent, active participation.

f. Anger management – Respondent mother completed an

anger management program at Daymark on 19 September 2017.

g. Safe and stable housing – Respondent mother had a period of homelessness during the years she has been involved with child protective services through [DSS]. She secured housing in November 2016 through the Troy Housing Authority, but is currently contesting an eviction resulting from not being eligible for a three-bedroom apartment while her children are in foster care.

h. Child support – Respondent mother is not under a child support order for the juvenile. She has not paid any portion of the cost of his care other than occasional clothes, diapers, and gifts.

i. Plan of care for the juvenile's heightened medical and behavioral challenges – Respondent mother offered various solutions for providing for the juvenile's immune system deficits and his challenging behaviors. Prior to the hearing, Respondent mother was unable to provide a viable plan of care to adequately meet the juvenile's needs. Respondent's plan of care presented at the hearing could not be vetted by [DSS] because respondent mother had not presented it to [DSS] in advance.

21. Respondent mother appears to be doing better than she has done in the past and has a support system in Troy, NC, that was not available to her until recently; however, the juvenile has been in foster care for 24 months, and Respondent mother's progress is not sufficient to meet his heightened needs.

22. Respondent mother testified to assistance from various family members who could provide for her and the juvenile if respondent mother's rights are not terminated. The testimony tended to show extended family members were available to help watch the child and or to assist in

transportation. The court did not receive testimony tending to show that persons offering to assist have received specialized training to manage the juvenile's unique behavioral needs. Nor did the court receive testimony tending to show that persons willing to assist have specialized knowledge or training in the area of the child's specialized medical condition. The child requires full time assistance to manage his medical appointments and daily care. The plan proposed by respondent mother was not detailed sufficiently to convince the court that the child would receive the same level of care on a daily basis while in her care that he has received while in foster care.

. . . .

26. Respondent mother was required to attend counseling and other services to address the domestic violence. She has only just begun to understand the impact of domestic violence on a family.

27. The juvenile has heightened medical and behavioral needs. He must attend medical appointments every week for between two and six hours to have intravenous steroid injections. He takes ten medications per day and cannot attend most daycare facilities.

28. The juvenile has behavior that is difficult to manage. He acts out by becoming aggressive such as biting, kicking, screaming, and yelling.

29. Due to the juvenile's medical diagnosis and behavior, he requires a high level of care, which Respondent mother is unwilling or unable to provide.

30. Within the last few months, Respondent mother was observed to be unable to manage the behaviors of the juvenile without assistance during a visit at a children's museum with the juvenile and his half-sibling . . . .

. . . .

32. After completing a psychological evaluation, individual therapy and DBT were recommended, among other things. Respondent mother has failed to engage consistently with either to the extent needed to make sufficient progress.

33. Until after the April 2017 permanency planning hearing, Respondent mother did not make consistent progress toward resolving many of the safety issues, even though most activities had been court ordered for over a year, and her children had been in [DSS] custody since October 2015.

34. Respondent mother has not attended all the visits offered to her.

35. Respondent mother has not made sufficient progress to resolve the neglect related to the juvenile and his needs. Respondent mother's failure to fully participate in therapy and visits subjects the juvenile to the risks of physical and emotional harm and creates an environment injurious to his welfare. Present neglect remains in existence and repetition is likely.

. . . .

[36]b. No adequate plan of care exists in Respondent mother's home to meet the juvenile's heightened medical and behavioral needs.

[36]c. Respondent mother's inconsistent participation with visits and therapy have left her unprepared for reunification with the juvenile.

37. It is likely that the neglect experienced by the juvenile in the care of Respondent will repeat or continue if the juvenile is returned to Respondent's care and custody. . . .

Respondent first challenges, as unsupported by the evidence, the statement in finding 26 that she had "only just begun to understand the impact of domestic violence on a family." We agree that the evidence did not show that respondent's understanding of the impact of domestic violence on a family had "only just begun." Respondent completed a domestic violence course in May 2017, and she testified at the termination hearing to what she had learned in the course:

> I learned that [domestic violence] does in fact have negative affects [sic] on children. They can feel guilty. They can feel sad. It can cause them to feel angry and feel at fault about, you know, – they don't [know] why their parents are fighting. They don't know, you know, all they see is the physical violence and they – and – and, you know they can't – they can't process it. They don't understand why.

The DSS social worker testified that respondent and the father had reported no contact with the other since the 3 December 2015 adjudicatory and dispositional hearing, and that, to her knowledge, respondent had not been involved in any domestic violence incidents since that time. While there was evidence that respondent missed some scheduled sessions for her domestic violence course, such that it took her nine months to complete it, that evidence alone does not speak to what respondent came to understand from the course. The evidence shows that the course was completed in May 2017, that respondent demonstrated some of what she learned from the course at the termination hearing, and that respondent was involved in no known incidents of domestic violence for roughly two years. Absent evidence of

anything remaining for respondent to learn about the effects of domestic violence on the family following completion of her domestic violence course, the finding that she had "only just begun to understand" those effects is unsupported. We will disregard this portion of finding 26 in our analysis.

Respondent next challenges the statement in finding 32 that she "failed to engage consistently with either [individual therapy or Dialectical Behavioral Therapy ("DBT")] to the extent needed to make sufficient progress." Similarly, respondent challenges the statement in finding 35 that her "failure to fully participate in therapy . . . subjects the juvenile to the risks of physical and emotional harm and creates an environment injurious to his welfare." We find support in the record for these findings.

Respondent acknowledges that she completed a psychological evaluation in May 2016, and that the evaluation resulted in a recommendation that respondent undergo individual therapy and DBT. In the nearly year-and-a-half time frame between when the therapies were recommended and the date of the termination hearing, respondent had not completed DBT, and there was a period of one year when she was not participating in individual therapy. Such supports the challenged portion of finding 32. Further, this Court has stated that "[a] parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 859 (2017). Thus, respondent's

failure to participate consistently in and complete the therapies was evidence that the juvenile was at risk of harm if returned to respondent's care, and finding 35 is supported by clear, cogent, and convincing evidence. Respondent's challenge to these statements in the findings lacks merit.

Respondent next challenges the statement in finding 20(c) that she "often failed to do her assigned homework and sometimes forgot her materials" for her parenting classes. However, evidence supporting this finding is found in the DSS court report prepared for the termination hearing, wherein the therapist who conducted the parenting classes reported that respondent "did participate in the sessions but often failed to do her assigned homework and sometimes forgot her materials." In its termination order, the trial court found the information within the DSS court report to be "relevant, reliable, and necessary[,]" and incorporated the report by reference with the termination order. Respondent fails to demonstrate that this statement in finding 20(c) lacks evidentiary support.

Respondent next appears to challenge the statement in finding 30 that she was "observed to be unable to manage the behaviors of the juvenile without assistance during a visit at a children's museum with the juvenile and his half-sibling." However, respondent does not contend that this statement lacked evidentiary support and therefore has not given this Court basis to review the statement.

Respondent challenges the trial court's statement in finding 29 that she is "unwilling or unable to provide" the level of care required for Asa as a result of his medical diagnosis and behavior. We agree that this finding is unsupported. While there was extensive evidence introduced regarding Asa's heightened needs relating to medical and behavioral issues, there was no evidence that respondent was "unwilling or unable" to provide for those needs. At the termination hearing, the DSS social worker testified that, to her knowledge, there was no suggestion that respondent had mismanaged Asa's medical issues prior to him being removed from the home. Furthermore, there was no evidence or findings that there were changed circumstances since that time such that respondent could no longer be said to be capable of providing care addressing those issues. The DSS social worker testified that respondent has "a really good grasp on all of [Asa's] medical needs and she is able to talk about, you know, what his diagnosis is and how it affects him." It is true that another of respondent's children died as a result of complications from the same immune disorder that Asa was born with, but there was no evidence introduced suggesting that respondent mismanaged that child's care. The evidence introduced at trial did not support finding of fact 29, and we, therefore, disregard that finding in our analysis.

Respondent does not challenge the remaining findings of fact, and they are therefore binding on appeal. *In re A.R.*, 227 N.C. App. 518, 520, 742 S.E.2d 629, 631

(2013). The trial court's findings that were supported by the evidence support the conclusion that neglect existed as a ground to terminate respondent's parental rights.[2] Those findings show that, during the twenty-four-month period that Asa was placed in foster care, respondent did not complete her case plan or even make consistent progress toward completion. While she completed domestic violence classes, her participation was inconsistent, and her completion of parenting classes was marred by her frequent failure to do the assigned work for those classes and to come prepared for class. Respondent's visitation with Asa was also inconsistent, and she exhibited difficulty controlling his behavior when she did visit with him. While respondent was not ordered to pay a specific amount in support of Asa's care, the extent to which a parent contributed to the child's needs is relevant to the issue of neglect, and the trial court found that respondent only occasionally provided support in the form of clothes, diapers, and gifts. Respondent had not been able to maintain stable housing, as she experienced periods of homelessness and was challenging her eviction at the time of the termination hearing. While the trial court acknowledged

[2] In arguing that the ground of neglect did not exist, respondent points to the fact that the trial court dismissed the petition to terminate respondent's parental rights to Asa's half-sister after concluding that DSS failed to prove the existence of any of the grounds listed in N.C. Gen. Stat. § 7B-1111. Respondent contends that the only difference between the two children's cases was that Asa had a medical condition, but that that medical condition could not form the basis for adjudicating the existence of neglect because there was never evidence that respondent had mismanaged Asa's care. As such, respondent contends that the trial court erred in failing to dismiss Asa's petition as well. However, the dismissal of the petition to terminate respondent's parental rights to Asa's half-sister is not subject to review by this Court, and we cannot assume the correctness of that decision as a baseline in determining whether neglect existed in Asa's case.

that respondent made some progress, the court correctly concluded that respondent's progress over the two-year period Asa was in foster care was insufficient to show that a repetition of neglect was not likely if Asa were returned to respondent's care. We conclude that the trial court's findings of fact support its conclusion that neglect existed as grounds to terminate respondent's parental rights to Asa.

Given our determination that the trial court correctly adjudicated the existence of neglect, we need not review respondent's challenges to the trial court's conclusions that the grounds for termination listed in N.C. Gen. Stat. § 7B-1111(a)(2) and (6) existed in this case. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat.] § 7B-1111 is sufficient to support a termination."). The trial court's order terminating respondent's parental rights is affirmed.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).