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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-381

Filed: 6 November 2018

Johnston County, No. 15 JT 198

IN THE MATTER OF: N.J.H.

Appeal by respondent-appellant mother from order entered 22 January 2018 by Judge Resson O. Faircloth in Johnston County District Court. Heard in the Court of Appeals 4 October 2018.

Mary McCullers Reece for petitioner-appellees.

Robert W. Ewing for respondent-appellant mother.

INMAN, Judge.

Respondent-mother ("Mother") appeals from the trial court's order terminating her parental rights to Nancy.[1] After careful review, we affirm the trial court's order.

In August 2008, Johnston County Department of Social Services received a report that Mother had threatened to commit suicide, was using illegal drugs, and had left Nancy in the home of petitioners, Mother's mother and stepfather ("the

[1] A pseudonym has been used throughout this opinion to protect the juvenile's privacy and for ease of reading.

Grandparents")—Nancy's maternal grandmother and step-grandfather—without returning as agreed or contacting them to advise of her whereabouts. In December 2008, the case was transferred to Nash County Department of Social Services ("DSS"). DSS developed a case plan with Mother to address substance abuse, mental health, and domestic violence issues. Mother agreed, *inter alia,* to submit to a substance abuse assessment and comply with the recommendations, submit to random drug screens, submit to a mental health evaluation and comply with recommendations, complete parenting classes, obtain and maintain stable housing, and maintain employment.

On 14 May 2009, DSS filed a juvenile petition alleging that Nancy was neglected and dependent. On 10 November 2009, the trial court entered an adjudication order adjudicating Nancy a neglected and dependent juvenile. The trial court found that, although Mother had submitted to a mental health assessment and worked with her social worker on parenting skills, she had failed to comply with the remaining requirements of her case plan. The trial court awarded legal guardianship of Nancy to the Grandparents. Mother was granted supervised visitation at least once a month, and DSS was relieved of further reunification efforts with Mother. In the event Mother wished to regain custody of Nancy, the trial court ordered that she must file a motion for review and be prepared to provide verification that she had: (1) participated in a domestic violence education program and demonstrated skills

learned; (2) actively sought employment and stable housing; (3) participated in a substance abuse evaluation and followed recommendations; (4) participated in cognitive behavioral therapy twice per month and met with a psychiatrist six times per year for medication management to reduce her symptoms from bipolar disorder; and (5) submitted to random drug screens.

After the juvenile petition was filed and prior to the trial court's November 2009 adjudication order, the parties appeared at a review hearing on 22 October 2009. Following that hearing, and also following the November 2009 adjudication order, the trial court entered an order on 3 December 2009 establishing continued legal guardianship with the Grandparents and a permanent plan of guardianship with a relative. The trial court found that: (1) Mother had not participated in cognitive behavioral therapy or medication management as recommended; (2) she had been discharged from the domestic violence education program as of 28 September 2009 due to non-participation; (3) she had failed to keep appointments to complete a substance abuse assessment and drug screens; and (4) she had not obtained employment or stable housing.

From 2010 until 2011, Mother rarely visited Nancy and was not involved in Nancy's care. Following Mother's first motion for review, the trial court entered an order on 20 October 2011 finding that Mother had completed high school, maintained a job for eight months, and paid child support. The trial court increased Mother's

access to Nancy, granting Mother unsupervised visitation on the first, third, and fifth Saturdays of each month from noon until 5:00 p.m. on Sundays.

In early 2012, Mother filed another motion for review, but failed to show up for court on the day of the hearing. On 29 March 2012, the trial court entered another review order, finding that Mother had lost her job and "fell back into her old habits of substance abuse." The trial court found that legal guardianship with the Grandparents should continue and that Mother was no longer entitled to unsupervised visitation. The trial court granted Mother supervised visitation in the Grandparents' home.

On 14 March 2013, the trial court conducted a review hearing on Mother's third motion for review and ordered that DSS complete a home study of Mother's home. The home study, provided to the trial court at a subsequent review hearing in December 2014, revealed that Nash County 911 had been called two dozen times to Mother's residence between February 2012 and June 2014.

On 22 July 2014, Mother filed a fourth motion for review. Based on evidence presented during a hearing on the motion in December 2014, the trial court entered a review order on 29 July 2015 finding that Mother's last visit with Nancy was December 2013. The trial court also found that Mother tested positive for marijuana on 4 November 2014, was unemployed, was financially supported by her fiancé and father, and recently had been arrested for drug possession. The trial court ordered

that legal guardianship of Nancy remain with the Grandparents. Mother continued to be entitled to supervised visitation at the Grandparents' home every Saturday.

On 22 December 2016, five years after Nancy was first placed in their custody, the Grandparents filed a petition to terminate Mother's parental rights. The petition alleged Mother had both neglected and willfully abandoned Nancy for at least six consecutive months immediately preceding the filing of the petition. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1), (7) (2017).

The petition to terminate Mother's parental rights was heard on 16 August and 1 November 2017. The trial court entered an order on 22 January 2018, concluding that both grounds alleged by the Grandparents existed to terminate Mother's parental rights. The trial court also concluded that it was in the best interests of Nancy to terminate Mother's parental rights. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). Guardianship of Nancy remained with the Grandparents. Mother timely appealed.

On appeal, Mother challenges several of the trial court's findings of fact. Mother also argues that the trial court's conclusion that grounds existed to terminate her parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(1) and (7) is not supported by sufficient findings of fact.

"This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to

support the court's findings of fact, and whether the findings of fact support the court's conclusions of law." *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015), *disc. review denied*, 369 N.C. 182, 793 S.E.2d 695 (2016). "If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (internal quotation marks and citation omitted). "The findings need to be stated with sufficient specificity in order to allow meaningful appellate review." *In re S.C.R.*, 217 N.C. App. 166, 168, 718 S.E.2d 709, 712 (2011). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and quotation marks omitted).

In support of its conclusion that grounds existed to terminate Mother's parental rights, the trial court made the following pertinent findings of fact:

> 8. Nash County DSS became involved with the Respondent mother in October 2008 when the Johnston County DSS requested assistance.
>
> 9. The involvement of Johnston County DSS began on 10 August 2008 when the child was approximately three months of age. Based upon the circumstances of the mother (recent positive drug screenings, involuntary commitment, failure to follow through with the child's pediatric appointments, leaving the child and disappearing for extended periods on multiple occasions), the agency recommended a kinship care placement of the child with [the Grandparents]. The child has remained in [the Grandparents'] physical care and custody since that time.

10. At that time the Johnston County DSS requested that [Mother] follow through with her own mental health treatment and follow all resulting recommendations; submit to random drug screens; enroll in school, obtain employment or obtain training aimed to help obtain employment and to promptly notify DSS of any significant changes in circumstances.

11. The Court received into evidence, and takes judicial notice of, Certified Copies of the following pleadings from the Nash County Juvenile Court (09-JA-60):

a. Juvenile Petition filed 14 May 2009 which set forth the history of the case leading up to the filing of the petition by [] DSS.

b. Amended Adjudication Order entered 10 November 2009. In this order, the child was adjudicated as a neglected and dependent juvenile. The court found that [Mother] failed to cooperate with her social worker or comply with the case plan. She recently had a mental health assessment and was diagnosed with Bipolar disorder. The assessment recommended that she participate with Cognitive Behavioral Therapy twice a month and participate in a medication management program. It was also recommended that she attend the WAVE program, which she did not do. She also failed to work with her social worker on parenting skills and made no effort to comply with the remaining issues addressed in her case[] plan. [Mother] was on probation at the time and failed to cooperate with her probation officer. She had had no contact with her social worker since August when she advised her that there was an outstanding warrant for her arrest from her probation officer. [The Grandparents] were appointed as the child's legal guardians and supervised visitation was allowed at least once per month between [Mother] and the child under the supervision of [the Grandparents]. The court

further set out a list of activities that would need to be completed by the parents prior to either filing a Motion for custody of the child. [Mother] was to complete: the WAVE program; seek employment and stable housing; participate in a substance abuse evaluation and follow recommendations; participate with cognitive behavioral therapy twice per month and with medication management with a psychiatrist to reduce bipolar disorder symptoms; submit to random drug screens.

c. Review Order entered 3 December 2009. The court found that [Mother] had not followed up with the recommended services for cognitive behavioral therapy and participation with medication management; she was discharged from the WAVE Program due to non-participation; failed to keep substance abuse assessment and drug screen appointments. She also failed to have employment or stable housing at that time. The court continued legal guardianship and supervised visits for [Mother] once per month and reiterated a list of items to be completed prior to any filing by her to review the court's order.

d. Review Order entered 20 October 2011. The court found that [Mother] had completed high school and had maintained a job for eight months at Papa John's and had paid child support. Therefore, [Mother] was granted unsupervised visitation on the 1st, 3rd, and 5th Saturdays at noon until 5:00 p.m. on Sundays.

e. Review Order entered 29 March 2012. The case came on for hearing on [Mother's] Motion for Review. [Mother] failed to attend the hearing. The court found that since the date of the last order, [Mother] had lost her job and fell back into her old habits of substance abuse. The Court found that guardianship with [the Grandparents] should continue and that [Mother's] visitation should be again supervised, but increased the frequency to weekly in [the Grandparents'] home.

f. Juvenile Order entered 22 March 2013. The case again came on for hearing on [Mother's] Motion for Review. At that time, the court directed [] DSS conduct a home study of [Mother's] residence [in] Middlesex, North Carolina.

g. This Home Study was completed by Nash County Social Worker, Amanda Jankowski and was admitted into evidence during her testimony at this trial.

h. Review Order entered 29 July 2015. This case again came on for hearing on [Mother's] Motion for Review which was filed on 22 July 2014. The court continued weekly visitation supervised by [the Grandparents]. The court found the following facts:

i. Nash County 911 was called twenty-four (24) times to [Mother's] residence between February 2012 and June 2014.

ii. [Mother] had not visited regularly since the last order granting her weekly visits was entered. The last visit which had occurred at that time was December of 2013.

iii. [Mother] was unemployed, still residing with her father and was financially supported by her fiancée and father.

iv. [Mother] tested positive for marijuana on the drug test which was administered by the Social Worker on 4 November 2014.

v. [Mother] had been recently arrested for drug possession.

12. [Mother] entered into an initial case plan with the Johnston County and Nash County DSS to address issues of substance abuse, mental health, parenting, stable housing, and employment. However, she failed to address any of those issues.

13. Despite being granted weekly visitation with the child, [Mother] failed to maintain regular contact with her daughter. [The maternal grandmother] kept a diary of

> [Mother's] visits with her daughter. [Mother] had the following visits with her daughter in the five (5) years leading up to the filing of this Petition:
>
> - 2012 3 visits totaling 4.75 hours
> - 2013 4 visits totaling 7.7 hours
> - 2014 1 visit for 1 hour
> - 2015 3 visits totaling 4.7 hours
> - 2016 5 visits totaling 10.5 hours
>
> . . . .
>
> 21. The respondent mother has not shown an ability to take care of her child which was removed from her custody in August of 2008.
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> 22. [Mother] has not provided any financial support for the child since the child was three (3) months old.[2]
>
> 23. [Mother] has withheld any parental guidance or nurturing for the child's entire life.
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> 24. [Mother] has not moved from her father's residence since August of 2008 when the child was placed in [the Grandparents'] home.
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> 25. If the child were to be returned to the care of [Mother], it is highly likely that the prior neglect would recur.
>
> 26. [Mother] has neglected this child by abandoning her. The allegations regarding abandonment are reincorporated herein.

Mother first argues that this Court should not consider Finding of Fact 11, because the trial court impermissibly relied on findings of fact made in prior review

[2] Finding of Fact 22 states that respondent-mother has not provided financial support since Nancy was three months old. This appears to be a typographical error, as the record discloses the last time respondent-mother provided support was when Nancy was three years old. That was five years before the hearing.

orders. We agree that a large portion of Finding of Fact 11 is improper and disregard it. But, as explained *infra*, a significant portion of Finding of Fact 11 was properly made and, when considered with other unchallenged Findings of Fact, is sufficient to affirm the trial court's termination on the basis of neglect. Because the conclusion of neglect is so supported, we do not reach Mother's arguments concerning abandonment. *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." (citation omitted)).

"In juvenile proceedings, it is permissible for trial courts to consider all written reports and materials submitted in connection with those proceedings. Nevertheless, [d]espite this authority, the trial court may not delegate its fact finding duty by relying wholly on DSS reports and prior court orders." *In re Z.J.T.B.*, 183 N.C. App. 380, 386-87, 645 S.E.2d 206, 211 (2007) (internal citations and quotation marks omitted). Because the prior orders may include findings of fact based on a lesser evidentiary standard than what is required in a termination proceeding, the trial court cannot merely rely on the findings of fact made in those orders. *See In re N.G.*, 186 N.C. App. 1, 9, 650 S.E.2d 45, 51 (2007) ("[T]he doctrine of collateral estoppel permits the trial court to rely on only those findings of fact from prior orders that 'were established by clear and convincing evidence.' " (citing *In re A.K.*, 178 N.C. App.

727, 731, 637 S.E.2d 227, 229 (2006))), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008). "When a trial court is required to make findings of fact, it must make the findings of fact specially. . . . [T]he trial court . . . must through processes of logical reasoning from the evidentiary facts find the ultimate facts essential to support the conclusions of law." *In re Weiler*, 158 N.C. App. 473, 478, 581 S.E.2d 134, 137 (2003) (internal citations and quotation marks omitted).

In Finding of Fact 11, the trial court received into evidence and took judicial notice of the findings made in its prior adjudication order and multiple review orders. Of these orders, only the adjudication order of Nancy as a neglected and dependent juvenile included findings of fact that were established by clear, cogent, and convincing evidence. Only the findings from this order may be incorporated by the trial court into its termination order without making an independent finding that they were supported by clear, cogent, and convincing evidence. The findings of fact in the review orders, including those detailing Mother's progress, or lack thereof, were not established under this evidentiary standard. Therefore, the trial court erred by incorporating the findings of fact from the prior review orders, and this Court must disregard those findings.

But a key portion of Finding of Fact 11—the portion incorporating Nancy's prior adjudication as neglected—was properly made, and "parental rights may . . . 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 her parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citations omitted). Though Mother's brief explicitly challenges Findings of Fact 11, 12, 21, 22, 23, and 26 as unsupported by the evidence, she does not specifically challenge Finding of Fact 25, which found that, "[i]f the child were to be returned to the care of [Mother], it is highly likely that prior neglect would recur." This unchallenged finding is binding on appeal and supports the trial court's conclusion that Nancy was neglected and likely to be neglected again if returned to Mother's care. *See In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 861 (2017) (holding a conclusion of neglect was adequately supported where defendant failed to challenge a finding that "there is a high probability of the repetition of neglect"). Furthermore, a review of the record discloses sufficient evidence supporting the challenged findings that, in turn, are sufficient to support the trial court's conclusion of neglect.

Finding of Fact 12 states that Mother "entered into an initial case plan with the Johnston County and Nash County DSS to address issues of substance abuse, mental health, parenting, stable housing, and employment. However, she failed to address any of those issues." This finding, at least as to a significant portion, is supported by testimony received into evidence by the trial court.

We note that, as set forth *supra*, the trial court was permitted to incorporate into the order terminating parental rights the amended adjudication order entered on 10 November 2009, which found that Mother "did not cooperate with her social worker or comply with the case plan."

On the question of substance abuse, the social worker assigned to Mother's case testified in the hearing on the petition to terminate parental rights that Mother failed her most recent drug test in November 2014. Also, Nancy's maternal grandmother testified in the termination hearing that Mother engaged in continued drug use. As for mental health treatment, the social worker testified that Mother had lied to her about seeking such treatment, which Mother herself confirmed on direct examination. Prior review orders, the contents of which the trial court was permitted to take judicial notice of (even though it could not incorporate the findings made in those orders), required Mother to attend cognitive behavioral therapy twice a month and participate in medication management with a psychiatrist six times a year—a requirement the social worker testified Mother had not met. Mother also testified she was unemployed at the time of the termination hearing, and the evidence shows she was unable to maintain employment at any given job for more than a few months. On the whole, the social worker testified that "there was some more things that needed to be completed" for Mother to comply with her case plan. Thus, there is

evidence to support, at a minimum, those portions of Finding of Fact 12 pertaining to substance abuse, mental health, and employment.

Findings of Fact 21 and 22, which found that Mother is unable to take care of Nancy and has not provided financial support, are likewise supported by the evidence. Nancy's maternal grandmother testified that Mother "doesn't care for her daughter[,]" and that Mother has never provided financial support for Nancy. Mother herself testified that she had not inquired as to Nancy's school events and doctor visits in two or three years, and was unaware of Nancy's need for increasing food expenses and new clothes and shoes as her daughter grew up. She also testified had never voluntarily contributed to any of Nancy's expenses. In an unchallenged finding, the trial court found that Mother had only visited Nancy three times in 2012, four times in 2013, one time in 2014, three times in 2015, and five times in 2016. This evidence supports Findings of Fact 21 and 22; when coupled with the supported portions of Finding of Fact 12 and the unchallenged and binding Finding of Fact 25, the trial court's order contains sufficient findings to support the trial court's adjudication of neglect on the basis that there exists a high probability of repetition of neglect. *C.M.P.*, ___ N.C. App. at ___, 803 S.E.2d at 861.

Because the trial court properly adjudicated Nancy neglected, we do not reach Mother's remaining arguments on appeal. For the reasons stated above, we affirm the 22 January 2018 termination order.

AFFIRMED.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).