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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-487

Filed: 4 December 2018

Mecklenburg County, No. 15 JT 69

IN THE MATTER OF: E.W.

Appeal by respondent from order entered 7 February 2018 by Judge Ty Hands in Mecklenburg County District Court. Heard in the Court of Appeals 8 November 2018.

Senior Associate County Attorney Kristina A. Graham for petitioner-appellee Mecklenburg County Department of Social Services, Youth and Family Services.

Lisa Anne Wagner for respondent-appellant mother.

Womble Bond Dickinson (US) LLP, by Mason E. Freeman and Ripley Rand, for guardian ad litem.

ZACHARY, Judge.

Respondent, the mother of the juvenile E.W. ("Ethan"),[1] appeals from an order terminating her parental rights. After careful review, we affirm.

[1] Pseudonyms are used throughout the opinion to protect the identity of the juvenile and for ease of reading.

On 16 February 2015, the Mecklenburg County Department of Social Services, Youth and Family Services ("YFS") filed a petition alleging that Ethan was a neglected and dependent juvenile. YFS stated that it had been working with Respondent-mother and Ethan since 2013 due to Respondent-mother's issues with unstable housing and employment, criminal conduct, and domestic violence. Regarding the latter, YFS alleged that police had been called many times to address domestic discord between Respondent-mother and her significant other ("Mr. S."), and that she had agreed to complete domestic violence counseling. YFS claimed, however, that Respondent-mother failed to complete counseling despite having two years in which to do so, and that domestic violence issues with Mr. S. continued to resurface. YFS obtained non-secure custody of Ethan, but left him in placement with Respondent-mother.

The trial court adjudicated Ethan to be neglected based upon a mediated agreement between the parties on 30 March 2015. The trial court found that "housing, employment, and domestic violence" were specific problems which led to the adjudication of neglect. The trial court left Ethan in place with Respondent-mother and adopted a permanent plan of reunification with a concurrent plan of guardianship or custody. In addition, the trial court ordered Respondent-mother to comply with her case plan, which included attending domestic violence counseling; obtaining a mental health assessment and following all recommendations; seeking

and maintaining stable employment and safe and appropriate housing; completing parenting education and demonstrating skills learned; maintaining contact with YFS; and attending all of Ethan's appointments.

On 9 July 2015, the trial court held an emergency review hearing. The trial court found that Respondent-mother had made little progress toward alleviating the problems which led to YFS intervention, and that she had requested that Ethan be placed in guardianship with his maternal great-aunt and uncle ("Mr. and Mrs. C."). In an order entered on 3 August 2015, the trial court placed Ethan in the guardianship of Mr. and Mrs. C. However, in an order entered on 31 May 2016, the trial court found that Mr. and Mrs. C. were no longer willing to be Ethan's guardians. The trial court dissolved the guardianship, and YFS placed Ethan in foster care.

On 3 May 2017, the trial court held a subsequent permanency planning review hearing. In an order entered on 5 June 2017, the trial court found that Respondent-mother was not making adequate progress on her case plan and was acting in a manner inconsistent with Ethan's health and safety. The trial court changed the primary permanent plan to adoption with a secondary permanent plan of reunification. Following a subsequent permanency planning review hearing held on 19 September 2017, the trial court changed the secondary permanent plan to guardianship and ordered YFS to file a petition to terminate Respondent-mother's parental rights within 60 days.

On 16 November 2017, YFS filed a petition to terminate Respondent-mother's parental rights on the grounds of neglect, failure to make reasonable progress, failure to pay support, and abandonment, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), & (7) (2017). On 7 February 2018, the trial court entered an order in which it determined that grounds existed to terminate Respondent-mother's parental rights based upon the grounds alleged in the petition. The trial court further concluded that it was in Ethan's best interests that Respondent-mother's parental rights be terminated. Accordingly, the trial court terminated Respondent-mother's parental rights. Respondent-mother appeals.

Discussion

Respondent-mother argues that the trial court erred by concluding that grounds existed to terminate her parental rights. We disagree.

N.C. Gen. Stat. § 7B-1111 sets forth the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted). We review the trial court's conclusions of

law *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

In the instant case, the trial court concluded that grounds existed to terminate Respondent-mother's parental rights based on neglect. N.C. Gen. Stat. § 7B-1111(a)(1). A "[n]eglected juvenile" is defined 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; 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; . . . or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2017). Generally, "[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child at the time of the termination proceeding." *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation and quotation marks omitted). When, however, as here, "a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible." *Id.* (citation and quotation marks omitted). "In those circumstances, 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." *Id.* (citation and quotation marks omitted).

Here, in the order terminating Respondent-mother's parental rights, the trial court found as fact that Ethan was adjudicated neglected on 30 March 2015. The trial court further noted that the adjudication of neglect was "based on facts including but not limited to: unstable housing [and] the mother's relationship with [Mr. S.], a relationship with an extensive history of domestic violence stemming back to at least 2013[.]" The trial court further found that Respondent-mother was offered the opportunity to address these issues through a service agreement with YFS. Pertinent parts of Respondent-mother's case plan included domestic violence counseling and the ability to demonstrate skills learned, as well as obtaining and maintaining safe and appropriate housing. Additionally, the trial court ordered that Ethan not be left alone with Mr. S. and that Mr. S. cooperate with YFS.

The trial court made the following findings relevant to Respondent-mother's failure to comply with these requirements:

> [13.]a. [Respondent-mother] has failed to adequately address her status as a domestic violence victim, including:
>
> i. declining to acknowledge the existence of domestic violence on numerous occasions, both in and out of court;
>
> ii. refusing to permit access to her home where the Social Worker and GAL could adequately assess whether or not [Mr. S.] remained in her home;

iii. providing inconsistent stories about whether or not [Mr. S.] was in her home, at times stating he was residing with her, at times stating they were in a relationship, at times denying same;

iv. failing to successfully complete domestic violence counseling, causing her case to be closed numerous times due to repeated absences.

b. Despite the fact that [Respondent-mother] has maintained housing throughout the tenure of this case, the Court is unable to ascertain the safety or stability of that housing with the unresolved issue of [Mr. S.'s] presence and his lack of engagement in any services.

i. [Mr. S.] was ordered to cooperate with YFS on 30 March 2015, yet failed to respond to all attempts by YFS to make contact with him.

ii. At times [Respondent-mother] was not helpful in assisting with access to [Mr. S.] but rather only gave basic information about [Mr. S.].

iii. In one instance, [Respondent-mother] refused to provide his phone number to YFS, despite the fact that his number was in her phone.

iv. [Respondent-mother] has provided inconsistent information about [Mr. S.'s] whereabouts, including in the May 2017 hearing [Respondent-mother] reported that she had not been in a relationship with [Mr. S.] since December 2016 but reported at the last hearing in February 2017 that he was living with her.

v. During the tenure of the case, [Respondent-mother] consistently created chaos where it was difficult to track who was doing what, when, where and how.

Unchallenged findings are deemed supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Moreover, we review only those findings necessary to support the trial court's determination that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent-mother's parental rights. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (explaining that erroneous findings that are unnecessary to support the adjudication of neglect do not constitute reversible error).

Respondent-mother argues that findings of fact 13(b), 13(b)(iv), and 13(b)(v) concerning neglect are erroneous. However, Respondent-mother's exceptions, offered without any specific arguments as to any of the individual findings of fact, are ineffectual. We thus decline to address Respondent-mother's challenge to these findings and are bound by them on appeal. *See In re A.C.*, 247 N.C. App. 528, 537 n.4, 786 S.E.2d 728, 736 n.4 (2016) ("Absent a more particularized argument as to particular facts, we decline to review the findings alluded to in respondent-mother's broadside exceptions." (citation omitted)).

Respondent-mother contends that her home was safe, stable, and appropriate. She claims there is no evidence of any domestic violence since 2013, and no evidence that Ethan has been left alone in Mr. S.'s care. However, the trial court's findings demonstrate that Respondent-mother failed to complete domestic violence counseling; repeatedly disputed the existence of domestic violence; permitted Mr. S.

to reside in the home with Ethan; and prevaricated regarding her continued relationship with Mr. S. Additionally, because Respondent-mother hindered efforts by YFS to determine whether Mr. S. was present in the home, as well as efforts by YFS to gain access to Mr. S., YFS was unable to determine the safety or stability of Respondent-mother's home or to engage Mr. S. in services. Consequently, given the historical facts of the case, the trial court correctly determined that there would be a likelihood of repetition of neglect should Ethan be returned to her care. *See In re J.A.M.*, __ N.C. App. __, __, 816 S.E.2d 901, 905 (2018) (where domestic violence was one of the grounds for removal from the home, the mother's (1) denial of the need for services; and (2) continued involvement with the father who engaged in domestic violence "constitute[d] evidence that the trial court could find was predictive of future neglect" (citation omitted)); *In re M.J.S.M.,* __ N.C. App. __, __, 810 S.E.2d 370, 373-74 (2018) (finding likelihood of repetition of neglect where, among other things, the mother minimized the impact of domestic violence between herself and the father, and was not truthful about contact between herself and the father).

Respondent-mother notes that two younger children remain in her custody without YFS intervention or a requirement that she engage in further domestic violence services. Respondent-mother contends that this evidence demonstrates that she is able to care for Ethan. While the trial court was free to consider this evidence, it did not preclude the court from determining in this case that there would be a

likelihood of repetition of neglect should Ethan be returned to Respondent-mother's home, and such evidence did not limit the trial court's ability to independently reach a conclusion as to whether grounds existed to terminate Respondent-mother's parental rights. Accordingly, we hold that the trial court did not err by determining that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent-mother's parental rights to Ethan.

Respondent-mother additionally argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), (3), and (7) to terminate her parental rights. However, because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to support the trial court's order, we need not address the remaining grounds found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

Respondent-mother next argues that the trial court abused its discretion when it determined that termination of her parental rights was in Ethan's best interest. We are not persuaded.

After an adjudication that one or more grounds for terminating a parent's rights exist, the trial court must determine whether termination of the parent's rights is in the juvenile's best interests by considering the following criteria:

(1) The age of the juvenile.

(2) The likelihood of adoption of the juvenile.

> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2017). This Court reviews the trial court's best interests determination for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "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." *State v. Hennis,* 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

Here, at disposition, after noting the age of the juvenile, the trial court made the following findings of fact:

> 19. The Court has considered the age of the juvenile, which is five (5), and finds the juvenile is at an age that adoption is feasible.
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> 20. Adoption is highly likely for the juvenile as he resides in a prospective adoptive home where the foster parent has indicated her desire to adopt him.
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> 21. Termination of the parental rights of [Respondent-mother] will assist the permanent plan of adoption because the only barrier to adoption for the juvenile is that the parental rights remain intact.

> 22. The Court has considered the bond between the juvenile and [Respondent-mother]. The bond has been stronger in the past, but there is evidence that this bond has lessened over the time that [Ethan] has been in custody, including the fact the [Respondent-mother] has not seen the juvenile since May 2017.
>
> 23. The Court considered the bond between the juvenile and the foster parent[.] This bond is strong. [The foster parent] treats [Ethan] as her own. [Ethan] is loved, his needs are met, and he is in a safe and appropriate placement.

Unchallenged dispositional findings are binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Respondent-mother contends that there is insufficient evidence to support finding of fact number 22. Respondent-mother claims that the only evidence that the bond between her and Ethan had lessened was the testimony of the guardian *ad litem*, who stated that the bond between them had weakened because Respondent-mother had failed to visit with Ethan. Respondent-mother contends that this testimony was entirely speculative. We disagree. The guardian *ad litem* testified that the bond between the foster parent and Ethan was stronger than the bond between Respondent-mother and Ethan. When challenged as to the basis of her opinion, the guardian *ad litem* further testified that she based her testimony "on the fact that [Ethan] hasn't seen [Respondent-mother] in a long time. I'm basing this on the fact that he doesn't hear from her." In addition, there was uncontroverted

evidence at the hearing that Respondent-mother had not seen Ethan since May 2017, six months prior to the hearing. Thus, the trial court had a rational basis upon which to find that the bond between Respondent-mother and Ethan had lessened. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (stating that it is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom").

Consequently, we conclude that the trial court's findings sufficiently demonstrate that it considered the statutory factors set forth in N.C. Gen. Stat. § 7B-1110(a), and that the trial court's ultimate determination that it was in Ethan's best interest to terminate Respondent-mother's parental rights was not manifestly unsupported by reason. We therefore hold that the trial court did not abuse its discretion when it concluded that it was in Ethan's best interest to terminate Respondent-mother's parental rights. Accordingly, we affirm the trial court's order terminating Respondent-mother's parental rights.

AFFIRMED.

Judges CALABRIA and TYSON concur.

Report per Rule 30(e).