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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-561

Filed: 15 January 2019

Cabarrus County, No. 15 JT 132

IN THE MATTER OF: S.M.M.

Appeal by respondent-mother from order entered 9 April 2018 by Judge William G. Hamby, Jr., in Cabarrus County District Court. Heard in the Court of Appeals 6 December 2018.

Hartsell & Williams, PA, by H. Jay White and Austin "Dutch" Entwistle III, for petitioner-appellee Cabarrus County Department of Human Services.

Mercedes O. Chut for respondent-appellant mother.

Womble Bond Dickinson (US) LLP, by Jacob S. Wharton and Ryan H. Niland, for guardian ad litem.

BERGER, Judge.

Respondent, the mother of the minor child S.M.M. ("Sarah"),[1] appeals from an order terminating her parental rights. We dismiss in part, affirm in part, and remand in part.

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[1] A pseudonym is used to protect the identity of the minor child and for ease of reading. *See* N.C.R. App. P. 3.1(b).

Factual and Procedural Background

On November 5, 2015, the Cabarrus County Department of Human Services ("CCDHS") filed a juvenile petition alleging that Sarah was neglected. In the petition, CCDHS alleged that it had been involved with respondent since 2008, based on twelve investigative reports made against her. It additionally alleged that the maternal grandmother, with whom Sarah was currently living, had been the subject of more than eighteen investigative reports since 1998. The petition included a detailed description of the history of domestic violence between respondent and the maternal grandmother in Sarah's presence. CCDHS described the event which led to the filing of the petition, in which respondent "slapped and beat up the maternal grandmother." The petition also included allegations that respondent had a history of substance abuse and mental health problems. CCDHS obtained nonsecure custody of Sarah and placed her in foster care.

The petition was heard on April 14, 2016. On August 1, 2017, the trial court entered an order adjudicating Sarah as a neglected juvenile. The court found that respondent had a lengthy history with CCDHS based on her untreated mental health and substance abuse, domestic violence, and improper care, and also found that her three other children were in CCDHS custody. The order explained the history of domestic violence between respondent and the maternal grandmother, culminating

in respondent assaulting the maternal grandmother in front of Sarah the day before the neglect petition was filed.

In the dispositional portion of its order, the trial court determined that respondent had already failed to make progress with respect to her other children and thus did not require CCDHS to engage in any reunification efforts. The primary permanent plan was set as reunification with the maternal grandmother with a secondary plan of legal guardianship with a court-approved caretaker. Respondent was denied any visitation until she completed a substance abuse program.

On May 11, 2017, the trial court entered a permanency planning order which changed the permanent plan to adoption with a secondary plan of guardianship, based on the maternal grandmother's failure to make sufficient progress on her case plan. As to respondent, the trial court found that she continued to have substance abuse issues, that she had been briefly imprisoned for a probation violation, and that she failed to cooperate with CCDHS in setting up visitation with Sarah.

On May 30, 2017, CCDHS filed a motion in the cause to terminate respondent's parental rights to Sarah based on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of the cost of Sarah's care, dependency, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6)-(7) (2017). The petition was heard on September 14, 2017. On April 9, 2018, the trial court entered an order terminating respondent's parental rights to Sarah, concluding that all of

the grounds alleged by CCDHS existed and that termination was in Sarah's best interests. Respondent filed a timely notice of appeal.

Respondent argues that the trial court erred by failing to require CCDHS to engage in reunification efforts at the initial dispositional hearing. This argument is not properly before us.

Analysis

Section 7B-1001 of the North Carolina General Statutes governs respondent's right to appeal in this case. It states that the following orders are appealable:

> (1) Any order finding absence of jurisdiction.
>
> (2) Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.
>
> (3) Any initial order of disposition and the adjudication order upon which it is based.
>
> (4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.
>
> (5) An order entered under G.S. 7B-906.2(b) with rights to appeal properly preserved, as follows:
>
> > a. The Court of Appeals shall review the order eliminating reunification as a permanent plan together with an appeal of the termination of parental rights order if all of the following apply:
> >
> > > 1. A motion or petition to terminate the parent's rights is heard and granted.

> 2. The order terminating parental rights is appealed in a proper and timely manner.
>
> 3. The order eliminating reunification as a permanent plan is identified as an issue in the record on appeal of the termination of parental rights.
>
> b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.
>
> c. A party who is a custodian or guardian shall have the right to immediately appeal the order.
>
> (6) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

N.C. Gen. Stat. § 7B-1001(a) (2017).

In her brief, respondent argues that the initial dispositional order is appealable as part of her appeal from the termination order under Section 7B-1001(a)(5), because the dispositional order "impliedly, if not expressly, ceased reunification efforts between DSS and [respondent]." (footnote omitted). However, respondent ignores the portion of that subsection which indicates it only applies to "[a]n order entered under G.S. 7B-906.2(b)." N.C. Gen. Stat. § 7B-1001(a)(5). Section 7B-906.2 of the North Carolina General Statutes governs orders entered after a permanency planning hearing; it has no application to an initial dispositional order entered pursuant to N.C. Gen. Stat. § 7B-901 (2017). Respondent was required to appeal the initial

dispositional order within thirty days of its entry pursuant to N.C. Gen. Stat. § 7B-1001(b) (2017). Since she failed to do so, the Court lacks jurisdiction to address her argument with respect to this order, and it must be dismissed.

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

"The standard for 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 Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). "If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court." *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (citations and quotation marks omitted).

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), "[t]he trial court may terminate the parental rights to a child upon a finding that the parent has neglected the child." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003). A neglected juvenile is defined, in relevant part, 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[.]" N.C. Gen. Stat. § 7B-101(15) (2017).

> Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a

> showing of past neglect and a likelihood of future neglect by the parent.

In re D.L.W., 368 N.C. 835, 843, 788 S.E.2d 162, 167 (citation omitted), *rehearing denied*, 369 N.C. 43, 789 S.E.2d 5 (2016).

Respondent contends that the trial court's findings do not support a determination that neglect would repeat if Sarah was returned to her care. In its termination order, the trial court made the following relevant findings:

> 8. It is not possible for the juvenile to return to the custody of Respondent . . . inasmuch as the conditions which led to the removal of the juvenile from the home as well as the accruing conditions have not been alleviated.
>
> 9. Respondent . . . demonstrated a pattern of failing to provide appropriate care for the juvenile and the Court finds that it is probable that this neglect would be repeated if custody of the juvenile was returned to Respondent . . . .
>
> 10. Respondent . . . has not improved the situation that led to the placement of the juvenile and based on the evidence presented on this date, the juvenile would be subjected to irreparable harm if the juvenile would be returned to Respondent . . . .
>
> . . . .
>
> 13. Respondent Mother has demonstrated a pattern of failing to provide appropriate care for the juvenile. It is highly probable that neglect would be repeated if custody of the juvenile was returned to Respondent . . . . Respondent . . . has neglected the welfare of the juvenile for several years. This behavior is likely to continue into the foreseeable future.
>
> . . . .

23. Since [the neglect adjudication], the Court has consistently reviewed Mother's progress towards alleviating or remedying the issues which led to the removal of the juvenile from the home. Mother has not made reasonable and adequate efforts towards the case plan to ensure the safety of the juvenile. There is a high probability of repetition of neglect and dependency of the juvenile if the juvenile were return to Mother's custody based upon Mother's lack of commitment towards working on this case plan or any plan that has been established for reunification with any of her children.

. . . .

25. Mother's mental health, substance abuse, and instability have been a continual concern through the life of this case. Initially after adjudication, Mother did attend a substance abuse assessment and completed 72 of 90 hours of treatment required. Mother had a clean drug screen in July 2016; however, Mother was discharged from one treatment facility on August 5, 2016 due to non-compliance. On August 16, 2016, Mother attended another substance abuse assessment as a condition of criminal probation, wherein it was recommended she participate in mental health treatment. She passed a drug screen at that assessment and at subsequent appointments on September 22, 2016 and October 13, 2016. Due to her efforts, Mother was allowed to have visitations with the juvenile beginning in September 2016 as-supervised by the juvenile's therapist.

26. As of October 12, 2016, Mother attended five anger management sessions, but declined ongoing mental health treatment as recommended by her therapist. On October 13, 2016, CCDHS was advised by Mother's probation officer that an order for Mother's arrest was issued on September 27, 2016, based on an allegation of absconding. The probation officer advised she had no contact with Mother since August 11, 2016.

> 30. On October 21, 2016, CCDHS confirmed that Mother had not had a medication management appointment with her provider since August 30, 2016; that she failed to schedule a follow-up appointment within six weeks as required, and that she was without medication to maintain her mental health stability.
>
> 31. From March 2017 through the date of this hearing, Mother has had multiple positive drug screens through her probation including most recently July 12, 2017, August 5, 2017 and August 25, 2017. Mother also admitted to doing cocaine on August 25, 2017.
>
> . . . .
>
> 34. Mother is supposed to attend Black Mountain for her substance abuse, but her mental health needs to be stable.
>
> 35. Mother has attended a few sessions with a parenting educator and attended visits with a parenting educator. She did not complete all of her sessions and advised the provider that she had too much going on to schedule any classes as-of November 2016.
>
> 36. Mother has failed to maintain any stable housing for any prolonged period of time during the pendency of this action.

Respondent does not challenge the substance of the majority of these findings, except for the trial court's finding with respect to her housing stability. However, the DSS social worker specifically testified that respondent never had "consistent, suitable housing[.]" For the remaining findings above, respondent argues that they "create a misleading impression of [respondent]'s progress in mental health, substance abuse treatment, and compliance with her probation officer." But the attempts at progress listed by respondent in her brief do not overcome the ample

evidence which establishes that Sarah would be neglected if returned to respondent's care. Respondent continued to abuse illegal drugs, testing positive for cocaine in August 2017, less than a month before the termination hearing. The social worker also testified at the termination hearing that respondent had made only "minimal" progress addressing her mental health issues and that her unstable mental health was preventing her from engaging in inpatient substance abuse treatment. The social worker's testimony supports the findings above,[2] which in turn support the trial court's determination that respondent's "neglect [of Sarah] would be repeated if custody of the juvenile was returned to Respondent." Accordingly, the trial court properly concluded that respondent's parental rights were subject to termination based on neglect. Since one ground for termination was adequately supported by the trial court's findings, it is unnecessary to address respondent's arguments as to the remaining grounds found by the trial court. *In re M.D.*, 200 N.C. App. 35, 40, 682 S.E.2d 780, 783 (2009).

Lastly, respondent argues that the trial court abused its discretion by concluding that the termination of her parental rights was in Sarah's best interests. We remand this issue for further findings of fact.

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[2] Respondent also challenges other findings of fact that do not affect our analysis as to this ground. Accordingly, we do not address respondent's arguments as to those findings. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When, however, ample other findings of fact support an adjudication . . ., erroneous findings unnecessary to the determination do not constitute reversible error.").

In deciding whether terminating parental rights is in a juvenile's best interests, the trial court must consider the following criteria and make findings regarding any that are relevant:

> (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). A factor is considered relevant if there is conflicting evidence concerning the factor presented at the termination hearing, such that it is placed in issue. *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015).

Respondent contends, correctly, that the best interests portion of the trial court's order does not address Sarah's likelihood of adoption. At the termination hearing, the social worker testified, "I think the likelihood of adoption is high once we get [Sarah] stable, but she cannot be stable until she has closure" and that "[Sarah] needs a little bit more stability before we can have that conversation [about adoption]." During her testimony, she also noted that Sarah had moderate mental

health needs, based on a diagnosis of post-traumatic stress disorder and disruptive mood dysregulation disorder. The guardian ad litem's written report, which was entered into evidence, simply indicates that "[t]he likelihood of adoption is good." The evidence was sufficient to put this statutory factor in issue and require the trial court to make a finding with respect to Sarah's likelihood of adoption. Since the trial court failed to do so, we must "remand for entry of appropriate findings pursuant to N.C. Gen. Stat. § 7B-1110(a)." *In re J.L.H.*, 224 N.C. App. 52, 60, 741 S.E.2d 333, 338 (2012).

Respondent also contends that the trial court failed to make findings regarding her bond with Sarah and multiple non-statutory factors that she claims were put in issue, such as Sarah's bond with her other maternal relatives and her special needs resulting from her mental health issues. However, these issues were not made relevant through the presentation of conflicting evidence. *See In re H.D.*, 239 N.C. App. at 327, 768 S.E.2d at 866. Moreover, Sarah's mental health conditions would already be part of the trial court's consideration of her likelihood of adoption. Thus, there are no other specific findings that *must* be made on remand.[3]

Conclusion

Respondent failed to timely appeal from the initial dispositional order, so her attempt to challenge that order as part of her termination appeal is dismissed. The

[3] The trial court retains the discretion to supplement its order as it sees fit, so long as it complies with the statute.

trial court made adequate findings of fact, supported by competent evidence, to support its conclusion that respondent's rights were subject to termination on the ground of neglect. The trial court did not make all of the required best interests findings, and the case is remanded for appropriate findings under N.C. Gen. Stat. § 7B-1110(a).

DISMISSED IN PART, AFFIRMED IN PART, AND REMANDED IN PART.

Judges STROUD and DILLON concur.

Report per Rule 30(e).