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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-156

Filed: 17 March 2020

Caldwell County, Nos. 16 J 65, 92

IN THE MATTERS OF: C.R.R. and M.N.H.

Appeal by respondent-mother from order entered 13 November 2018 by Judge Burford A. Cherry in Caldwell County District Court. Heard in the Court of Appeals 27 February 2020.

Lucy R. McCarl for petitioner-appellee Caldwell County Department of Social Services.

Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by Catherine R.L. Lawson, for guardian ad litem.

ARROWOOD, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights to her children, C.R.R. ("Carl") and M.N.H. ("Michael")¹ (collectively,

¹ Pseudonyms are used to protect the juveniles' identities and for ease of reading. See N.C.R. App. P. 42(b) (2020).

“the children”), on the grounds of neglect, willfully leaving the children in foster care without showing reasonable progress to correct the conditions that led to their removal, and willful abandonment. For the following reasons, we affirm the trial court’s order.

I. Background

Respondent-mother has an extensive history with Child Protective Services (“CPS”) dating back to 2005 due to issues of substance abuse, domestic violence, and instability. On 13 April 2016, the Caldwell County Department of Social Services (“DSS”) obtained non-secure custody of then one-month old Michael and filed a juvenile petition alleging him to be a neglected and dependent juvenile after his meconium tested positive for cocaine at birth, and he was placed in the neonatal intensive care unit due to withdrawal symptoms. The petition alleged that eleven days after Michael’s birth, respondent-mother tested positive for morphine, hydrocodone, oxymorphone, and methadone. Although she reported having a prescription for Percocet and being enrolled in a methadone program, she did not provide an explanation for the other substances found in her system. The petition also alleged that respondent-mother suffered from mental health issues and had been hospitalized on several occasions. Finally, the petition alleged that respondent-mother had been offered case management services over the course of her history with CPS, but she failed to comply with the recommendations from assessments and

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DSS's requests for drug screens, continued to abuse illegal and prescription drugs, and maintained a relationship with an individual who had committed domestic violence acts.

On 12 May 2016, respondent-mother entered into an out-of-home case plan with DSS detailing the steps she needed to take in order to be reunited with her children. Pursuant to the case plan, respondent-mother was required to do the following: complete a Comprehensive Clinical Assessment ("CCA") or Psychological Evaluation by an approved provider that could also address substance abuse and comply with all treatment recommendations; sign a consent for release of information for RHA Health Services, Inc., ("RHA") and any other mental health treatment providers; refrain from using any illegal substances or medications that were not prescribed; notify the social worker of any prescription medications being taken; sign a consent for release of information for all substance abuse treatment providers; comply with random drug screenings and hair follicle testing; work with the McLeod Center to reduce methadone dosage to a level that does not cause drowsiness and impairment; attend and participate in parenting classes and demonstrate skills learned during visits; attend all scheduled visitations with Michael at DSS; refrain from being under the influence of any illegal drugs or non-prescribed medications during visitations; maintain stable and appropriate housing; obtain and maintain verifiable employment; complete a domestic violence assessment with the Shelter

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Home and follow any recommendations; refrain from maintaining relationships with individuals who engage in physical/domestic violence; notify the social worker of anyone she is in a relationship with so that a background check may be completed; and refrain from maintaining relationships with individuals who engaged in criminal activity.

At the time DSS filed the juvenile petition regarding Michael, respondent-mother's two other children, Carl and I.C.,² were not in her care. Respondent-mother signed custody of I.C. over to the maternal grandmother in 2009, and Carl had been residing in a kinship placement with the maternal grandmother since August 2014. On 22 June 2016, the maternal grandmother was hospitalized due to reported cardiovascular issues, and, as a result, Carl was left in respondent-mother's unsupervised care in violation of a safety plan. That same day, DSS obtained non-secure custody of Carl and filed a juvenile petition alleging him to be neglected and dependent. The petition noted respondent-mother's extensive CPS history and alleged that Carl had been exposed to chronic substance abuse by respondent-mother and physical violence involving respondent-mother.

The juvenile cases were consolidated for hearing, and the petitions came on for adjudication and disposition on 25 January 2017. In an order entered 3 March 2017,

² I.C., the oldest child, is not a part of this appeal, and we discuss the facts only as they pertain to Carl and Michael.

the trial court adjudicated Michael and Carl to be neglected and dependent children based, in part, on the factual stipulations submitted by the parties.

In a separate disposition order entered 8 March 2017, the trial court found that the “ultimate barrier” to respondent-mother “having custody or any form of contact with her own children” was her “serious, long-standing substance abuse problem.” The court found that respondent-mother completed a CCA on 5 May 2016, and it was recommended that she undergo an additional twenty hours of out-patient substance abuse treatment. However, on 10 August 2016, RHA reported that respondent-mother was not in compliance with the treatment recommendations. From July to September 2016, respondent-mother tested positive for cocaine on ten different occasions and tested positive for amphetamines, methamphetamines, and methadone on one occasion each. Following a hair follicle drug screen conducted on 12 December 2016, she tested positive for methamphetamine, cocaine, hydrocodone, and oxycodone.

The court also found that respondent-mother submitted to a mental health evaluation on 30 December 2016 and was diagnosed with post-traumatic stress disorder, cocaine use disorder, and depression. It was recommended for respondent-mother to attend individual and group therapy, complete at least twenty hours of addiction recovery focused group sessions, attend the trauma group sessions, and

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engage in twelve-step meetings for support. However, respondent-mother did not return to RHA for ongoing mental health treatment.

Respondent-mother completed a domestic violence assessment on 24 June 2015, however she only attended one session of the recommended twelve-week domestic violence education and support group class. The court also found that respondent-mother completed the Tweeners parenting course for Carl but did not complete the Nurturing Parenting course for Michael. Respondent-mother's visitation with the children had been ceased due to her concerning behavior during the visits. However, in its disposition order the trial court granted respondent-mother supervised telephone contact with Carl and one hour of supervised visits with Michael every other week. Additionally, the trial court again ordered respondent-mother to comply with the requirements of her case plan "should she seek reunification with the [children]."

The trial court conducted a permanency planning review hearing on 10 May, 16 August, 24-25 October 2017, and 31 January 2018. In an order entered 6 February 2018, the trial court established a primary permanent plan of adoption with a secondary plan of guardianship with a relative or a court-appointed caretaker and ceased reunification efforts with respondent-mother. The court found that respondent-mother was not actively participating in or cooperating with her case plan, DSS, or the guardian *ad litem*, and that she was acting in a manner inconsistent

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with the health and safety of the juveniles. Specifically, the court found that respondent-mother failed to resolve her substance abuse issues and continued to test positive for illegal substances. On 17 August 2017, she tested positive for cocaine and marijuana, and on 4 January 2018, she tested positive for cocaine. The court also found that respondent-mother's visitation had been ceased due to her behavior during visits and her failure to complete the required drug screenings. Respondent-mother had fallen asleep several times during visits and appeared intoxicated during nine visits between 5 May 2016 and 17 August 2016. The court further found that respondent-mother failed to complete a psychological evaluation and was not participating in any mental health treatment at the time.

On 17 August 2018, DSS filed a motion to terminate respondent-mother's parental rights to Carl and Michael, alleging the grounds of neglect, willful failure to make reasonable progress to correct the conditions which led to the children's removal, and willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(1), (2), (7). Following a hearing held 25 and 26 September 2018, the trial court entered an order on 13 November 2018 concluding that grounds existed to terminate respondent-mother's parental rights as alleged, and that termination of respondent-mother's parental rights was in the children's best interests. Accordingly, the trial court terminated respondent-mother's parental rights. Respondent-mother timely appealed.

II. Discussion

On appeal, respondent-mother argues the trial court erred in concluding that she abandoned the minor children, willfully left them in foster care, and neglected them, such that grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111. We disagree.

“The standard of 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 Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004) (quoting *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984)). “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) (quoting *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988)). Unchallenged findings of fact “are conclusive on appeal and binding on this Court.” *Id.* at 532, 679 S.E.2d at 909 (citing *In re J.D.S.*, 170 N.C. App. 244, 250-51, 612 S.E.2d 350, 354-55 (2005)). 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). “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.” *In re Humphrey*, 156 N.C. App. 533, 540,

577 S.E.2d 421, 426 (2003) (citing *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984)).

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.” *Id.* at 540, 577 S.E.2d at 427 (citing N.C. Gen. Stat. § 7B-1111(a)(1) (2019)). A neglected juvenile is defined, in relevant part, as “[a] juvenile . . . whose parent, guardian, custodian, or caretaker does not provide the proper care, supervision, or discipline; or who has been abandoned . . . or who lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2019).

“A finding of neglect sufficient to terminate parental rights must be 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) (citation omitted). However, “[w]here, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect.” *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citing *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001)). In such cases, “a prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect.” *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). When a prior neglect adjudication is

considered, “[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect.” *Id.* at 715, 319 S.E.2d at 232 (citation omitted).

Thus, where there is no evidence of neglect at the time of the termination proceeding, “parental rights may nonetheless be terminated if there is a showing of 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 [his or] her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citing *Ballard*, 311 N.C. at 716, 319 S.E.2d at 232). As our Supreme Court has emphasized, “[t]he determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*.” *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232 (emphasis in original). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018) (citing *In re D.M.W.*, 173 N.C. App. 679, 688-89, 619 S.E.2d 910, 917 (2005)).

In her brief, respondent-mother acknowledges the children were previously adjudicated neglected on 3 March 2017, and that the main areas found to constitute neglect were her substance abuse and mental health issues, domestic violence, and that Michael’s meconium tested positive for cocaine. She argues, however, that the trial court erred in finding there was a likelihood of repetition of neglect because her

circumstances had improved at the time of the termination hearing. As to her mental health and substance abuse issues, respondent-mother asserts that she “gained insight into her ongoing struggles with mental health and substance abuse.” Specifically, she voluntarily admitted herself into a hospital to obtain treatment for her mental health issues, voluntarily enrolled in an inpatient recovery program from 23 April 2018 to 11 May 2018, and enrolled in and attended Narcotics Anonymous meetings twice per week. Regarding domestic violence, respondent-mother claims she did not complete the domestic violence program because she was “able to avoid ‘domestic violence’ situations” and “maintained a life since July 2016 with no domestic violence.” Therefore, she argues the record demonstrates that she gained critical knowledge and made several improvements to her situation such that her conditions had changed at the time of the hearing. We disagree.

The trial court’s findings, which are unchallenged and thus binding on appeal, demonstrate that respondent-mother failed to complete a vast majority of her case plan aimed at addressing the issues that led to the children’s removal from her care. As the trial court found, respondent-mother failed to adequately address her mental health and substance abuse issues during the two-and-a-half years since the children were removed from her care. She continued to engage in drug use, testing positive for cocaine and methamphetamine as recently as one month prior to the termination hearing. Although the trial court found that respondent-mother had admitted herself

to Grace Hospital in April 2018 for mental health reasons and to the Alcohol and Drug Abuse Treatment Center in May 2018 for substance abuse treatment, it also found that respondent-mother did not comply with the recommended follow-up treatment upon her discharges. In addition, at the time of the termination hearing in October 2018, she was not participating in any substance abuse or mental health treatment.

The trial court also found that respondent-mother failed to address domestic violence concerns. She did not complete domestic violence classes as required by her case plan, and remained in contact with a former abusive partner. Respondent-mother claims she did not complete the classes because she was able to avoid domestic violence situations and has maintained a life free of domestic violence since July 2016. However, the trial court found that in December 2017 she was in contact with an ex-boyfriend, who she alleged previously committed domestic violence acts and caused her to suffer a drug overdose when he gave her heroine laced with fentanyl. Respondent-mother similarly failed to successfully meet other objectives of her case plan as well. The trial court found that respondent-mother did not complete the parenting class for Michael's age group and did not demonstrate any learned skills during visits with the children. She also failed to maintain contact with DSS and to sign consent forms for DSS to obtain information about the treatment in which she was engaged.

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The trial court further found that respondent-mother did not have safe, appropriate housing. She was living in a storage building located on her mother's property that she had set up as an apartment, which she believed to be an appropriate residence for the children but for the lack of running water. Finally, the trial court found that respondent-mother did not obtain employment throughout the life of the case, had no means of income, and was dependent on her mother to meet her expenses and pay her bills. These unchallenged findings demonstrate that respondent-mother failed to satisfy a vast majority of her case plan requirements and support the trial court's conclusion that there was a likelihood of repetition of neglect if the children were returned to respondent-mother's care. *See In re C.N.*, __ N.C. App. __, __, 831 S.E.2d 878, 882 (2019) (holding "[a] parent's failure to make reasonable progress in completing a case plan may indicate a likelihood of future neglect.").

Respondent-mother argues that because the children's initial neglect adjudications did not include findings related to her housing or lack of employment, her progress, or lack thereof, on those conditions was not relevant. However, this Court has previously rejected this argument as meritless. *See In re C.G.R.*, 216 N.C. App. 351, 360, 717 S.E.2d 50, 56 (2011) (determining the respondent-mother's argument "that her lack of stable housing and employment" were "improperly considered in the trial court's order terminating her parental rights" because those conditions "were not the basis for [the child] being removed from her custody" was

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meritless). Furthermore, respondent-mother was ordered to maintain stable housing and employment as part of her case plan in order to address the issues relating to the children being removed from her care. Thus, those factors were relevant in determining whether there was a reasonable likelihood that neglect would repeat in the future. *See* N.C. Gen. Stat. § 7B-904(d1)(3) (2019) (providing that the trial court may order a parent to “[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile’s adjudication or to the court’s decision to remove custody of the juvenile from the parent[.]”).

Respondent-mother next argues that the trial court could not conclude that there was a likelihood of repetition of neglect because it never identified how the original neglect conditions caused the children harm or a substantial risk of harm. She argues that neither the initial adjudication order nor the termination order addressed how her substance abuse or domestic violence issues presented a harm to the children. Respondent-mother contends, without citing any authority, that the trial court “must take into account the type of neglect allegations that were found and how the court found that those particular neglect allegations caused harm or a substantial risk of impairment in light of the parent’s circumstances at the time of the termination hearing before drawing any conclusion as to the likelihood of repetition [of neglect].”

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To the extent respondent-mother appears to challenge the initial adjudication of neglect, respondent-mother did not appeal from that adjudication order and thus, is estopped from challenging the findings and conclusions made therein in this appeal. *See In re Wheeler*, 87 N.C. App. 189, 194, 360 S.E.2d 458, 461 (1987) (“The doctrine of collateral estoppel operates to preclude parties from retrying fully litigated issues that were decided in any prior determination and were necessary to the prior determination.”) (citation and quotation marks omitted). To the extent respondent-mother challenges the termination order from which she appealed, respondent-mother has not cited any authority to support her assertion that the court must find in the termination order how the initial neglect conditions caused the children harm before it could properly determine there was a likelihood of repetition of neglect, and she has therefore abandoned this argument. *See Thompson v. Bass*, __ N.C. App. __, __, 819 S.E.2d 621, 627 (2018) (“[I]t is the appellant’s burden to show error occurring at the trial court, and it is not the role of this Court to create an appeal for an appellant or to supplement an appellant’s brief with legal authority or arguments not contained therein. Accordingly, if an argument contains no citation of authority in support of an issue, the issue will be deemed abandoned.”) (citations omitted).

Nevertheless, as stated above, where, as here, the parent does not have custody of the children at the time of the termination hearing, “parental rights may

nonetheless 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.” *Reyes*, 136 N.C. App. at 815, 526 S.E.2d at 501 (citing *Ballard*, 311 N.C. at 716, 319 S.E.2d at 232). Given the children’s prior adjudication of neglect, and respondent-mother’s failure to address the issues presented in her case plan, the trial court properly determined that there was a probability of repetition of neglect if the children were returned to respondent-mother’s care.

The trial court’s unchallenged findings thus demonstrate that respondent-mother failed to resolve her substance abuse, mental health, and domestic violence issues that led to the children being removed from her care. Indeed, in regard to her substance abuse issues, the court found that respondent-mother “believe[d], based on her testimony, that ‘it didn’t matter what drugs she used, her children would be cared for by her family’” and that “family is more important than treatment[.]” The findings also show that respondent-mother was unemployed, relied on her mother to meet her expenses and pay her bills, and did not have appropriate housing.

Based on the foregoing analysis, we hold the trial court’s findings of fact support its conclusion that there is a strong probability that the children would be neglected again if they were returned to respondent-mother’s care. *See In re C.M.P.*, 254 N.C. App. 647, 655, 803 S.E.2d 853, 859 (2017) (“A parent’s failure to make

progress in completing a case plan is indicative of a likelihood of future neglect.”). Therefore, the trial court did not err in concluding that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate respondent-mother’s parental rights. The finding of this statutory ground alone suffices to support termination, and we need not address respondent-mother’s arguments regarding the other grounds found by the court to terminate her parental rights. *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019). Respondent-mother did not challenge the trial court’s determination that termination of her parental rights was in the children’s best interests. We therefore affirm the trial court’s order terminating respondent-mother’s parental rights.

III. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).