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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-34

Filed: 17 March 2020

Nash County, Nos. 16 JT 14–15

IN RE: N.J.E. and J.D.E.

Appeal by respondent-mother from order entered 10 July 2018 by Judge John J. Covolo in Nash County District Court. Heard in the Court of Appeals 27 February 2020.

Jayne B. Norwood for petitioner-appellee Nash County Department of Social Services.

Forrest Firm, P.C., by Patrick S. Lineberry, for respondent-appellant mother.

White & Allen, P.A., by Christopher J. Waivers, for guardian ad litem.

BRYANT, Judge.

Respondent appeals from an order terminating her parental rights to her minor children N.J.E. (“Nunez”) and J.D.E. (“Jethro”).¹ We hold the trial court did not err in terminating respondent’s parental rights on the ground of neglect and affirm the court’s order.

¹ Throughout the opinion, we use the same pseudonyms as used in the parties’ briefs to protect the juveniles’ identities.

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On 4 February 2016, the Nash County Department of Social Services (“DSS”) filed petitions alleging Nunez and Jethro were abused and neglected juveniles. DSS alleged at least one of the children had been sexually abused, they resided in an environment injurious to their welfare due to the untreated mental health issues of respondent and her live-in boyfriend, and instances of domestic violence occurred between respondent and her boyfriend while the children were in the home. DSS obtained non-secure custody of the children that same day.

After a hearing on 19 May 2016, the trial court entered an order adjudicating the children to be neglected juveniles. The trial court continued custody of the children with DSS and granted respondent weekly supervised visitation with the children for a minimum of two hours. Respondent was ordered to complete a mental health evaluation, to comply with all recommendations resulting from that evaluation, and to complete a “Couples in Harmony” domestic violence program if she chose to remain with her boyfriend. Respondent’s boyfriend was forbidden to have any contact with the children.

In a review order entered following a hearing on 25 August 2016, the trial court found respondent did not believe her boyfriend was a risk factor for her children and thought he was a role model for them. Respondent’s boyfriend had violated the no-contact provision of the adjudication order by speaking with respondent’s children when he picked up respondent after she visited with them. The trial court continued

custody of the children with DSS and respondent's weekly visitation with the children. Respondent was ordered to complete a mental health and psychological evaluation and comply with all recommendations. The court also ordered respondent to complete a parenting class to address the effects of domestic violence on children and obtain and maintain stable housing. The court sanctioned a primary permanent plan for the children of reunification and a secondary plan of custody with a court-approved caretaker.

The trial court continued the permanent plans for the children as reunification and custody until 17 August 2017, when the court entered an order setting the primary plan as adoption and the secondary plan as reunification with a parent. The court found: respondent had not cooperated with the department; while respondent denied remaining in a relationship with her boyfriend, respondent continued to be seen with her boyfriend; respondent had not been seen at her medication management provider's office since July 2016 and had not refilled her prescriptions; respondent and her boyfriend had stopped attending couples therapy; respondent had been involved in multiple incidences of domestic violence with her boyfriend; and respondent had not obtained a full mental health and psychological assessment, because her initial assessor reported her symptoms were so confusing that he did not feel comfortable offering a diagnosis.

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On 2 October 2017, DSS filed motions to terminate parental rights to the children. DSS alleged grounds existed to terminate respondent's parental rights based on neglect, failure to make reasonable progress to correct the conditions that led to the removal of the children from her care, and failure to pay a reasonable portion of the cost of care for the children. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2017).

After a hearing on 26 April and 31 May 2018, the trial court entered an order dated 10 July 2018 terminating respondent's parental rights to the children.² The court concluded that all three alleged grounds existed to terminate respondent's parental rights and that termination of her parental rights was in the children's best interests. Respondent filed timely notice of appeal.

On appeal, respondent argues the trial court erred in concluding grounds exist to terminate her parental rights. We disagree and hold the trial court did not err in terminating respondent's parental rights on the ground of neglect.

This Court reviews a trial court's order finding grounds exist to terminate parental rights to determine "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 S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 58–59 (2008)

² The court's order also terminated the parental rights of the children's father, but he is not a party to this appeal.

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(citation omitted), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009). “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 (citation omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citation omitted). “The trial court’s conclusions of law are fully reviewable *de novo* by the appellate court.” *S.N.*, 194 N.C. App. at 146, 669 S.E.2d at 59 (citation omitted).

Grounds exist to terminate parental rights when the parent has neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2019). A neglected juvenile is defined in part as one “who does not receive proper care, supervision, or discipline . . . or who lives in an environment injurious to the juvenile’s welfare[.]” N.C. Gen. Stat. § 7B-101(15) (2017).³ 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) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). 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,

³ This definition was amended effective 1 October 2018, after the termination order in this case had been entered. See 2018 N.C. Sess. Laws 68 § 8.1.(b).

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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) (citations omitted). A trial court may terminate parental rights based upon prior neglect of a juvenile if “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) (citation omitted). Although it is not dispositive, “whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of [the] child[]” is relevant to determining whether neglect would reoccur. *In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (first alteration in original) (citation omitted).

Here, the trial court’s findings of fact establish: the children were removed from respondent’s care and adjudicated neglected juveniles based upon incidents of domestic violence between respondent and her boyfriend; respondent developed a case plan with DSS that required her to have a mental health evaluation, comply with all recommendations of the evaluation, and attend a domestic violence program with her boyfriend; respondent informed DSS and the trial court that she was no longer in a relationship with her boyfriend, but she was repeatedly seen with him, described him as a role model for the children, and briefly went to Virginia with him; although respondent completed online parenting classes and entered a medication

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management program, she refused to engage in recommended services with PRIDE, which had a program intended to address her issues with mental health, parenting skills, and domestic violence; respondent was subsequently involved in further incidents of domestic violence with her boyfriend. Respondent eventually left her boyfriend, moved to Virginia, and entered into a new relationship with a man with a lengthy criminal record. Respondent referred to this new man, whom she had only known for a few months, as her fiancé but refused to provide DSS with information about the man, which hindered DSS's ability to determine if he could safely be around the children. Respondent lied to the trial court about engaging in mental health therapy with a therapist in Virginia and later admitted the therapist was her fiancé's "life coach," who did not provide mental health therapy to her. Respondent admitted her previous relationship with her boyfriend caused long term mental and emotional health issues that continued to the date of the hearing. Respondent acknowledged the domestic violence between her and her boyfriend for the first time during her testimony at the hearing to terminate her parental rights.

Of these listed findings, respondent only challenges the court's finding that her first acknowledgement of any domestic violence between her and her boyfriend did not occur until she testified at the hearing. Respondent contends DSS did not present any evidence to the trial court to support this finding. However, the trial court took judicial notice of its prior orders and the reports submitted to the court in the

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underlying juvenile case, and that evidence did not document any prior acknowledgments by respondent of her domestic violence issues. The record before this Court thus supports the trial court's finding and establishes that respondent refused to acknowledge the domestic violence between her and her boyfriend, or the impact it had on her and her children, until the hearing to terminate her parental rights.

Respondent does not object to the remainder of the listed findings, making them binding on appeal. *T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. Respondent challenges other parts of the trial court's findings of fact not mentioned above. However, these remaining challenges are not relevant to our analysis and therefore need not be addressed. *Id.* at 407, 831 S.E.2d at 58–59 (“[W]e review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.”).

Respondent also argues that the trial court's findings fail to show a likelihood of repetition of neglect if the children are returned to her care. In support of this argument, she notes that the children were removed from her care based primarily on domestic violence between her and her ex-boyfriend. Respondent contends that there was no indication she would continue to expose the children to domestic violence if they were returned to her, because she had left the boyfriend that was the “source” of the domestic violence in her life months prior to the termination, and she then

entered into a stable relationship with her fiancé, who had no history of domestic violence.

The trial court's findings of fact reflect that, after the children were placed in DSS custody on 3 February 2016, respondent spent another year-and-a-half continuing an on-again, off-again relationship with her boyfriend that included multiple incidents of domestic violence. She repeatedly lied to DSS about the status of her relationship during this time. Respondent did not end this relationship until shortly before the termination motions were filed in October 2017.

Respondent is correct that ending this abusive relationship constituted some progress towards correcting the domestic violence issues, but her testimony at the termination hearing demonstrated that she had not fully addressed the lingering impacts of the relationship. As found by the trial court, respondent "testified in an extremely loud and emotional manner that [her relationship with her ex-boyfriend] has caused long term effects of mental and emotional health issues for her and that [her ex-boyfriend] continues to make her feel suffocated and trapped." The court also found that respondent "exhibited extreme mood swings" during her contact with DSS and that respondent "acknowledged that she has had long term problems with anxiety and depression."

Although respondent acknowledged her mental health issues, she generally failed to participate in the therapy needed to treat those issues. Respondent refused

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to engage in recommended services with PRIDE, which offered a program intended to comprehensively address respondent's issues with mental health, parenting skills, and domestic violence. While respondent attended a handful of mental health appointments with other providers, for most of the time the children were in DSS custody, she engaged in no therapy at all. Respondent was not attending therapy during the several months she lived in Virginia prior to the termination hearing in April 2018. She then lied about her treatment during this period on the first day of the hearing, claiming that she was receiving mental health therapy with a therapist in Virginia who turned out to be her fiancé's "life coach." It was subsequently determined that this life coach did not provide mental health therapy and that respondent was not her client. After respondent returned to North Carolina, she was unable to obtain an intake appointment to resume therapy with a new provider until August 2018, which was months after the termination hearing.

Moreover, at the time of the termination hearing, respondent was living with her fiancé, whom she had only known for a few months. Despite respondent's refusal to provide DSS with any information regarding her fiancé, DSS was able to discover that he had a substantial criminal record dating back twenty years. This criminal history called into question the fiancé's fitness to live with and care for the children. Respondent failed to rebut the evidence suggesting the fiancé was an inappropriate mate who would reside with her minor children, even after the trial court continued

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the termination hearing for a month, in part because it wanted to hear testimony from the fiancé. Finally, respondent had been unemployed since 2017, and while she claimed her fiancé was making \$1000 per week, she provided no evidence to verify this claim.

The trial court's findings establish that respondent has a history of lying to DSS about the status of her relationships, that she did not acknowledge her past domestic violence in court until she testified at the termination hearing, that she refused to provide DSS or the trial court with information about her new fiancé, and that she was unemployed. Although respondent ended the relationship that initially exposed the children to domestic violence, she failed to engage in needed therapy to help her deal with the repercussions that resulted from that domestic violence and lied to both DSS and the trial court about her participation in therapy. Ultimately, respondent did not resolve multiple issues that placed the children at risk for future neglect if they were returned to her care.

Accordingly, we hold the trial court did not err in adjudicating the existence of the ground of neglect to terminate respondent's parental rights to the children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Having so concluded, we need not address respondent's challenge to the trial court's adjudication of additional grounds for termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) and (3). *See In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53–54 (2019) (reasoning that as a single ground for

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termination of parental rights is sufficient to support such an order, this Court need not address contentions addressing alternative grounds). Respondent does not challenge the trial court's conclusion that termination of her parental rights is in the best interests of the children, and we affirm the court's order.

AFFIRMED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).