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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-567

No. COA21-615

Filed 16 August 2022

Durham County, Nos. 16 JA 171–73

IN THE MATTERS OF:

A.D-D., A.D., A.D., Jr.

Appeal by respondent from order entered 7 July 2021 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 27 April 2022.

The Law Office of Derrick J. Hensley, PLLC, by Derrick J. Hensley, Esq., and Durham County Department of Social Services, by Senior Assistant County Attorney Elizabeth P. Kennedy-Gurnee, for petitioner-appellee.

Peter Wood for respondent-appellant mother.

N.C. Administrative Office of the Courts Guardian Ad Litem Program, by Michelle FormyDuval Lynch, for guardian ad litem.

DIETZ, Judge.

¶ 1 Respondent appeals the trial court's order terminating her parental rights to her children Alice, Anna, and Arnold.[1] The trial court terminated Respondent's parental rights after finding that the children were neglected and there was a

[1] We use pseudonyms to protect the identities of the juveniles.

reasonable probability that the neglect would continue if the children were returned to Respondent's care.

¶ 2 As explained below, the trial court properly found facts supporting its conclusions of law based on clear and convincing evidence in the record. We therefore reject Respondent's challenge and affirm the trial court's termination order on this basis. Because we do so, we need not address Respondent's challenge to the alternative ground for termination.

Facts and Procedural History

¶ 3 On 28 October 2016, the Durham County Department of Social Services received a report alleging physical abuse and neglect of Respondent's children. During their investigation, DSS found that Alice and Anna both had bruising on their backs and shoulders. Alice stated that Respondent caused her bruising by hitting her with a brown shoe. Alice also stated Respondent caused the bruising on Anna. Additionally, Respondent injured Alice's nose, causing it to bleed. DSS filed petitions alleging that Alice was abused and all three children were neglected.

¶ 4 On 16 December 2016, the trial court adjudicated Alice as an abused child and adjudicated all three children as neglected. The trial court ordered Respondent to participate in a comprehensive mental health evaluation, complete a parenting class, develop appropriate nurturing skills, and refrain from physical discipline.

¶ 5 On 4 January 2017, Respondent completed a mental health assessment with

Carolina Outreach. At the time, Respondent's goals were to decrease symptoms of PTSD and other mental health conditions, find stable housing, maintain a steady source of income, and comply with the requirements provided by DSS. In some treatment sessions, Respondent discussed continuing her relationship with the children's biological father despite a documented history of domestic violence.

¶ 6 On 20 January 2019, Respondent reported a domestic violence incident in which she stated that she was beaten and assaulted by the children's father. After the incident, the court ordered Respondent to engage in further domestic violence assessment and counseling.

¶ 7 Until January 2019, Respondent was unable to secure stable housing and alternated between homelessness and living with the children's biological father. Between January 2019 and August 2019, Respondent lived with her grandmother. However, in August 2019, Respondent secured housing for herself and her two other children who remained in her care.

¶ 8 On 14 August 2019, DSS filed a petition to terminate Respondent's parental rights. Following a hearing, the trial court entered an order terminating Respondent's parental rights. The court concluded that grounds for termination existed on the basis that all three children were neglected and the neglect was nearly certain to continue if the children were returned to Respondent's care, and that Respondent willfully left the children in foster care for over twelve months while failing to make reasonable

progress toward correcting the conditions that led to removal. Respondent timely appealed.

Analysis

I. Neglect

¶ 9 Respondent first argues that the court erred when it found grounds to terminate her parental rights on the basis of neglect under N.C. Gen. Stat. § 7B-1111(a)(1). Respondent asserts that several factors, including her recent change to stable housing, her progress with her case plan, and the incarceration of the children's biological father, refute the trial court's finding that there was a substantial likelihood that the past neglect would continue.

¶ 10 "We review an order terminating parental rights to determine whether the findings of fact are supported by clear and convincing evidence and whether the conclusions of law are supported by the findings of fact." *In re T.J.C.*, 225 N.C. App. 556, 560–61, 738 S.E.2d 759, 762 (2013). If the trial court's findings are supported by clear and convincing evidence, the court's findings are binding on appeal, even if there is evidence to the contrary. *In re Dhermy*, 161 N.C. App. 424, 430, 588 S.E.2d 555, 559 (2003).

¶ 11 The trial court may terminate parental rights upon a finding that "the parent has abused or neglected the juvenile." N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is defined as:

> Any juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker . . . does not provide proper care, supervision, or discipline; creates or allows to be created a living environment that is injurious to the juvenile's welfare. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home . . . where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15). 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). However, the trial court must employ a different analysis when children are not in parental custody at the time of the proceedings. *See In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001), *aff'd*, 356 N.C. 68, 565 S.E.2d 81 (2002). The trial court must consider evidence of changed conditions in light of the history of neglect by the parent, and the probability of a repetition of neglect. *Id.* In predicting the probability of repetition of neglect, the court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case. *In re M.P.M.*, 243 N.C. App. 41, 48, 776 S.E.2d 687, 692 (2015).

¶ 12 Here, the trial court found that, although Respondent began living in a "3 bedroom 1 ½ bath home" beginning in August 2019, Respondent "did not have stable housing during a substantial part of this case from 2017 to 2019." The trial court also found that Respondent "continued to return to her relationship" with the children's

father "who was her abuser at the time of the filing of the original petition, even as late as January 2019." The trial court then described the events of the January 2019 violent encounter Respondent had with the children's father and referenced the court's findings from a February 2019 hearing that Respondent did not appear to understand the importance of severing all contact with the father following that incident.

¶ 13 The court then found that Respondent "demonstrated a pattern of minimizing, reporting and then returning" to the father "even after several agencies provided services and the mother demonstrated no progress." The court further found that Respondent's "different accounts of the traumatic incident that occurred in 2019 and the delay in reporting the incident to the police is further indication that Respondent Mother has not truly learned anything from the domestic violence as a victim counseling that she has attending." Based on these findings, the court then found that Respondent's "home environment remains unsafe with regard to a likelihood of repetition of domestic violence." Finally, the trial court made findings concerning the other portions of Respondent's case plan and found that Respondent had not made sufficient progress and that Respondent "was not able to manage [the children's] needs and behaviors, even in a supervised setting despite having engaged in parenting education."

¶ 14 All of these findings are supported by clear and convincing evidence in the

record. Respondent contends that she "learned from parenting classes and used appropriate parenting skills" during the supervised visits, but the trial court's findings, supported by testimony from Respondent's case workers, demonstrate that Respondent's progress was not sufficient to remove the unsafe conditions present when the children were in her care.

¶ 15 Respondent also argues that the children's father is "serving a prison term with no expected release date until 2028" and thus "the probability of any future harm to the children by him during the next seven years amounts to zero." But the trial court's findings were not based on the likelihood that the father would harm Respondent or the children, but on Respondent's inability to understand the danger a domestic abuser posed to her and her children, even after repeated attempts at domestic violence counseling.

¶ 16 Finally, Respondent argues that she obtained stable housing, but this does not impact the trial court's finding that her employment circumstances remained "unstable" and that she was unable to maintain stable housing "during a substantial part of this case from 2017 to 2019." This, in turn, supports the trial court's finding that there was a reasonable probability that these issues would recur.

¶ 17 Taken together, the trial court's findings demonstrate that Respondent previously had abused one of the children; neglected all three of the children; failed to maintain stable housing and employment; and failed to make progress on the

mental health and domestic violence issues that played a significant role in Respondent's inability to properly care for the children.

¶ 18 These findings, which are supported by clear and convincing evidence in the record, support the trial court's ultimate finding that Respondent created "an environment which was injurious to" the children's welfare and that there is "a reasonable probability that is a near certainty that such abuse and neglect would be continued and repeated if the children were returned to the care, custody, or control" of Respondent. The trial court properly concluded, based on these findings, that grounds existed to terminate Respondent's parental rights based on neglect. *See In re M.P.M.*, 243 N.C. App. at 48, 776 S.E.2d at 692. We therefore reject Respondent's challenge to this portion of the trial court's order.

II. Failure to make reasonable progress

¶ 19 Respondent next challenges the trial court's determination that she willfully left the children in a placement outside the home for more than 12 months and failed to make reasonable progress to remedy the circumstances that to their removal under N.C. Gen. Stat. § 7B-1111(a)(2).

¶ 20 When a trial court "finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246

(2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). Thus, having determined that the trial court had grounds to terminate Respondent's parental rights based on neglect, we need not address this issue.

Conclusion

¶ 21 We affirm the trial court's order.

AFFIRMED.

Judges GRIFFIN and JACKSON concur.

Report per Rule 30(e).