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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-490

Filed 07 March 2023

Burke County, No. 20 JT 56

In the Matter of: K.M.K.

Appeal by Respondent-Mother from order entered 17 March 2022 by Judge Burford A. Cherry in Burke County District Court. Heard in the Court of Appeals 22 February 2023.

*Amanda C. Perez for Petitioner-Appellee Burke County Department of Social Services.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Amelia L. Serrat and Michael W. Mitchell, for Appellee Guardian ad Litem.*

*Freedman Thompson Witt Ceberio & Byrd PLLC, by Christopher M. Watford, for Respondent-Appellant Mother.*

COLLINS, Judge.

Respondent-Mother appeals from the trial court's order terminating her parental rights. Mother argues that the trial court's findings of fact do not support its conclusions of law that multiple grounds existed for terminating Mother's parental

rights to her juvenile son, Kevin.<sup>1</sup> Additionally, Mother argues that the trial court abused its discretion by failing to consider Kevin's relationship with his maternal grandmother when it determined that terminating Mother's parental rights to Kevin was in Kevin's best interests. Because the trial court's findings of fact support its conclusion of law that grounds existed to terminate Mother's parental rights to Kevin, and because the trial court did not abuse its discretion in determining that terminating Mother's parental rights was in Kevin's best interests, the trial court's order is affirmed.

### **I. Factual Background and Procedural History**

Kevin was born on 22 November 2019 in Burke County, North Carolina. At birth, Kevin's urine tested positive for amphetamines. On 28 November 2019, Kevin was placed in a temporary safety placement with his maternal step-grandfather, where he remained until 29 December 2019, when he was placed with Mother's family friend. On 4 March 2020, the family friend informed the Burke County Department of Social Services ("DSS") that she could no longer care for Kevin. Burke County DSS identified Kevin's maternal uncle and aunt as a possible placement for Kevin but could not contact Mother to obtain approval. On 4 March 2020, Burke County DSS filed a juvenile petition alleging that Kevin was a neglected and dependent juvenile and obtained an order for nonsecure custody identifying Kevin's maternal uncle and

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile. See N.C. R. App. P. 42.

aunt as appropriate caregivers. Kevin has remained with his maternal uncle and aunt since then.

On 30 April 2020, the trial court entered a Juvenile Consent Adjudication Order adjudicating Kevin to be “a neglected juvenile pursuant to N.C. Gen. Stat. § 7B-101(15) in that the juvenile’s parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline for the juveniles and the juveniles lived in an environment injurious to the juvenile’s welfare.” The matter was transferred to Caldwell County due to a conflict of interest, where a disposition hearing was held on 7 and 8 July 2020. On 7 August 2020, the trial court entered a Juvenile Disposition Order, making the following findings of fact:

36. . . . [Mother] has made little progress towards addressing the issues that led to the juvenile coming into custody. She entered into an Out-of-Home Family Services Agreement with the Department [of Social Services] on 4/29/2020. Areas of concern include the following: mental health and substance abuse; parenting skills; employment; and housing.

37. A referral to complete a mental health/substance abuse assessment was sent to A Caring Alternative and One Love Services on 1/9/20 and 3/16/20. At the direction of the Department, [Mother] contacted A Caring Alternative on 3/10/20 regarding the assessment. She was advised to call or come by between 8:00 a.m. to 11:00 a.m. to complete the assessment. She has not scheduled an appointment or completed the assessment. She has sporadically submitted to random drug screens as set forth in the Department’s report. She used illegal substances during her pregnancy resulting in the juvenile testing positive at birth. She continues to use illegal substances as evidenced by the numerous positive drug screen results set forth in the

Department's report.

38. [Mother] was referred to parenting education on 3/16/20. She has not scheduled an appointment. An additional referral to the Caldwell County Committee for Healthy Families has been submitted.

39. [Mother] is currently unemployed. She has no verifiable source of income. She has not shown proof that she is seeking employment. She does not have independent transportation.

. . . .

52. The issues that led to the Department's involvement with this family continue to exist.

53. The juvenile continues to require more adequate care than Respondent parents can provide at this time, and the juvenile needs a more secure placement than Respondent parents can provide at this time.

The trial court ordered:

15. [Mother] shall enter into an Out-of-Home Family Services Agreement with the Department and comply with the terms of such case plan, including, but not limited to, the following: (a) obtain a Comprehensive Clinical Assessment (CCA) with a substance abuse component and comply with any recommendations; (b) submit to random urine and hair follicle drug screens as requested by the Department; (c) complete an age appropriate parenting program; and (d) obtain and maintain employment, independent housing, and suitable transportation.

On 27 October 2020, a permanency planning hearing was held where Caldwell County DSS reported that Mother "has made little to no progress towards addressing the issues that led to the juvenile coming into DSS custody[,] and recommended that the court "cease reunification efforts and establish a primary permanent plan of

adoption . . . .” On 12 November 2020, the trial court entered a Juvenile Permanency Planning Order finding that Mother “has only made limited progress consisting of starting, but not completing, two online parenting classes. She has limited employment. She has received no substance abuse and/or mental health treatment. She continues to use illegal substances and most recently used two days prior to [the] hearing.” The trial court ordered the primary permanent plan for Kevin to be adoption. The matter was transferred back to Burke County in December 2020 when the conflict of interest no longer existed.

On 5 May 2021, Burke County DSS filed a petition to terminate Mother’s parental rights, alleging:

20. Pursuant to N.C.G.S. § 7B-1111(a)(1), the respondent parents have neglected the minor child pursuant to the meaning of neglect as defined under NC. Gen. Stat. § 7B-101 (15) and there is a high likelihood that the respondents would continue to neglect the minor child if she were returned to the respondents’ care . . . .

. . . .

21. Pursuant to N.C. Gen. Stat. §7B-1111(a)(2), the respondent parents have willfully left the minor child in foster care or placement outside of the home for more than twelve (12) months without showing to the satisfaction of the Court that reasonable progress under the circumstances has been made in correcting those conditions that led to the removal of the minor child.

. . . .

22. Pursuant to N.C. Gen. Stat. §7B-1111(a)(3), the minor child has been placed in the custody of the Burke County Department of Social Services continuously since on or before March 4, 2020, and the respondent parents, for a

continuous period of six (6) months next preceding the filing of the motion, have willfully failed for such a period to pay a reasonable portion of the cost of care for the minor child, although physically and financially able to do so.

Adjudication and disposition hearings were conducted on 19 August 2021, 3 September 2021, and 10 December 2021. After hearing arguments and receiving evidence, the trial court entered a Termination of Parental Rights Order, concluding that grounds for terminating Mother's parental rights to Kevin existed pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), and (3), and that terminating Mother's parental rights to Kevin was in Kevin's best interests. Mother appealed.

## **II. Discussion**

### **A. Standard of Review**

"Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796-97 (2020) (citation omitted). "At the adjudicatory stage, the petitioner bears the burden of proving by 'clear, cogent, and convincing evidence' the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes." *In re A.U.D.*, 373 N.C. 3, 5-6, 832 S.E.2d 698, 700 (2019) (citing N.C. Gen. Stat. § 7B-1109(f)). We review a trial court's adjudication of grounds to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52

(2019) (quotation marks and citations omitted). “A trial court’s finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding.” *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (citation omitted). Unchallenged findings of fact 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) (citations omitted). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citation omitted).

If the trial court concludes that the parent’s rights may be terminated, “the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.” *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citations omitted). We review the trial court’s dispositional findings of fact to determine whether they are supported by competent evidence. *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020). Unchallenged dispositional findings are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). A trial court’s best interests determination “is reviewed solely for abuse of discretion.” *In re A.U.D.*, 373 N.C. at 6, 832 S.E.2d at 700 (citation omitted).

## **B. Grounds for Termination**

Mother argues that the trial court erred because its findings of fact do not support its conclusion that, “pursuant to N.C.G.S. § 7B-1111(a)(1), the [Mother] has

neglected the juvenile, [Kevin] as defined by N.C.G.S. § 7B-101(15) and there is a high probability that the [Mother] would continue to neglect the juvenile if he were returned to the [Mother's] care.”

A trial court may terminate parental rights if it concludes that the parent has neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2022). Section 7B-101 defines a neglected juvenile as one under the age of 18 whose parent “[d]oes not provide proper care, supervision, or discipline” or “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2022).

When a termination of parental rights is based upon a determination of neglect and 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. at 843, 788 S.E.2d at 167 (citation omitted). In this situation, “evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). “The 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.* (citation omitted). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020) (citation omitted).



Here, Mother failed to challenge any of the trial court's findings of fact regarding Mother's past neglect and her likelihood of future neglect. Thus, these findings are binding on appeal. *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58 (citations omitted). In these unchallenged findings, the trial court found that Kevin had been adjudicated neglected pursuant to N.C. Gen. Stat. § 7B-101(15) on 30 April 2020, and that Mother was court ordered to:

[E]nter into an Out-of-Home Family Services Agreement with the Department [of Social Services] and comply with the terms of such case plan, including, but not limited to, the following: (a) obtain a Comprehensive Clinical Assessment (CCA) with a substance abuse component and comply with any recommendations; (b) submit to random urine and hair follicle drug screens as requested by the Department; (c) complete an age appropriate parenting program; and (d) obtain and maintain employment, independent housing, and suitable transportation.

The trial court also found that Mother "has vacillated in her progress on her case plan and the orders of the court but has been unable or unwilling to complete her case plan over the last year."

Regarding substance abuse treatment and drug screening, the trial court found that:

93. [Mother] failed to schedule or attend any treatment with Burke Recovery until after the filing of the Motion to Terminate Parental Rights [on 5 May 2021].

94. [Mother] completed a Comprehensive Clinical Assessment with Burke Recovery on July 22, 2021, the original hearing date for commencement of the Termination of Parental Rights Hearing. According to the

outcome of this assessment, this she was recommended to complete 20 hours of substance abuse therapy sessions.

95. As of September 13, 2021, [Mother] had only attended one session, on August 2, 2021, and again failed to complete recommended services.

96. [Mother] completed a four-hour online class with North American Learning Institute regarding “drug and alcohol awareness” and has provided the court with her completion certificate. . . . The online class was insufficient to address [Mother]’s struggle with addiction.

. . . .

98. [Mother] has refused to submit to hair follicle drug screens to assist the Department and the court in monitoring her sobriety.

99. [Mother] submitted a drug screen on January 23, 202[0]. She also submitted to three drug screens in April 2020 and one in May 2020. The drug screens in January and April 2020 were positive for methamphetamine and amphetamines and the drug screen in May 2020 was positive for amphetamines. . . .

100. Caldwell County Department of Social Services requested that [Mother] drug screen on June 16 and 29 and September 4 and 28, 2020. [Mother] failed to submit to the drug screens.

101. On October 27, 2020 [Mother] told the Caldwell County court that she would be positive on a drug screen as she had last used two days prior. [Mother] was actively using substances during that time period.

Regarding parenting education, the trial court found that:

86. [Mother] claimed that she was completing an online parenting class. The Caldwell County Social Worker told [Mother] that the class she was purportedly taking did not meet the necessary criteria for parenting classes. [Mother] did not check with her social worker in Caldwell County or Burke County regarding these classes to be sufficient to satisfy the need for parenting education. Despite claiming

that she has completed the training, she did not bring a completion certificate with her to court.

87. Respondent mother was referred to parenting education at One Love Services by Caldwell County on March 16, 2020. An additional referral to the Caldwell County Committee for Healthy Families for the Nurturing Parenting Program was submitted. [Mother] has failed to engage in an appropriate parenting education curriculum. Caldwell County made two referrals for parenting for [Mother].

Regarding employment, housing, and transportation, the trial court found that:

89. [Mother] does not have full time employment; however, she has the capacity to be employed. After the filing of the termination of parental rights, the mother received an offer of employment with Blue Ridge Health Care. She was supposed to begin employment there during the pendency of this hearing; however, she failed to receive the appropriate Covid vaccines necessary for employment and her offer was rescinded.

90. Prior to the termination of parental rights proceeding, [Mother] worked for Door Dash, a food delivery service from August 2020 until April 2021. [Mother] learned that Door Dash would not be considered sufficient employment by the Social Worker. She was unemployed until August 19, 2021 when she learned she was approved for employment with Blue Ridge Hospital.

....

102. [Mother] blames lack of transportation for her inability to engage in services and gain full time employment; however, [Mother's] lack of attempting to gain reliable transportation was willful. . . .

....

103. . . . [Mother] did not engage with her family, paramour, or paramour's family to get assistance with

transportation for services or employment. . . . Since the filing of the termination of parental rights, she has been able to borrow a car from family. [Mother] did not check into locating a bus route to provide transportation.

. . . .

107. [Mother] has made inconsistent statements regarding the stability of her housing. From 2017 until July 2021, she lived with Respondent-Father. The trailer that they lived in was owned by Respondent-Father's mother. The land that the trailer is on is owned by the Respondent-Father's uncle. The stability of her housing after [July 2021] is in question and is doubtful.

108. Since the filing of the motion to terminate parental rights[, Mother] was informed that the trailer could no longer be kept on the land and Respondent-Father would need to move the trailer off of the lot. [Mother] was aware that she was about to be homeless on August 20, 2021 in about another month after that date.

109. [Mother] subsequently stated that she can remain in the trailer as long as she wants. However, this statement is not credible. . . .

These unchallenged findings of fact show that Mother had not addressed the issues which led to Kevin's initial adjudication as neglected. Thus, these findings support the trial court's conclusion that "there is a high probability that [Mother] would continue to neglect the juvenile if he were returned to [Mother's] care." Accordingly, the trial court did not err by concluding that grounds existed to terminate Mother's parental rights to Kevin pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Mother argues that the trial court "failed to make a finding that specifically addresses the [Mother's] circumstances at the time of the termination hearing and

how those circumstances differed from those justifying the consent adjudication of neglect.”

When determining whether future neglect is likely, the trial court “must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019) (citation omitted). However, the “trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.” *In re M.S.E.*, 378 N.C. 40, 54, 859 S.E.2d 196, 208 (2021) (citation omitted).

Here, the trial court made several findings regarding Mother’s circumstances at the time of the hearing, including:

80. [Mother] has vacillated in her progress on her case plan and the orders of the court but has been unable or unwilling to complete her case plan over the last year.

....

89. [Mother] does not have full time employment; however, she has the capacity to be employed. After the filing of the termination of parental rights, the mother received an offer of employment with Blue Ridge Health Care. She was supposed to begin employment there during the pendency of this hearing; however, she failed to receive the appropriate Covid vaccines necessary for employment and her offer was rescinded.

....

94. [Mother] completed a Comprehensive Clinical Assessment with Burke Recovery on July 22, 2021, the original hearing date for commencement of the Termination of Parental Rights Hearing. According to the

outcome of this assessment, this she was recommended to complete 20 hours of substance abuse therapy sessions.

95. As of September 13, 2021, [Mother] had only attended one session, on August 2, 2021, and again failed to complete the recommended services.

....

108. Since the filing of the motion to terminate parental rights[, Mother] was informed that the trailer [in which she lived] could no longer be kept on the land and Respondent-Father would need to move the trailer off of the lot. [Mother] was aware that she was about to be homeless on August 20, 2021 in about another month after that date.

....

110. [Mother] receives food stamps in an amount that includes her, Respondent-Father, and two children as a residents of the home.

....

121. Neither of the Respondent-Parent have addressed the issues that brought the juvenile into foster care. Neither parent has engaged in and completed substance abuse treatment. . . .

122. The Respondent-Parents have not addressed fully the issues of neglect which brought the juvenile into care and the likelihood of continued neglect is high if the juvenile was returned to their care.

While our Supreme Court has remanded cases for further findings when “the trial court’s adjudication order is devoid of any determination of a likelihood of future neglect[,]” *In re B.R.L.*, 379 N.C. 15, 22, 863 S.E.2d 763, 770 (2021), this is not such a case.

Mother argues that the trial court erred by concluding grounds existed to terminate her parental rights to Kevin pursuant to N.C. Gen. Stat. § 7B-1111(a)(2)

and N.C. Gen. Stat. § 7B-1111(a)(3). However, “[t]he court may terminate the parental rights upon a finding of one or more” enumerated grounds for termination. N.C. Gen. Stat. § 7B-1111(a) (2022). Because the existence of a single ground for termination supports the termination of a parent’s rights, we do not address Mother’s arguments under N.C. Gen. Stat. §§ 7B-1111(a)(2) and (3). *See In re M.S.E.*, 378 N.C. at 59, 859 S.E.2d at 211.

### **C. Best Interests of the Child**

Mother argues that the trial court abused its discretion by “failing to consider the potential impact a termination of parental rights would have on [Kevin’s] positive relationship with the maternal grandmother” while determining Kevin’s best interests at the dispositional stage.

In determining whether termination of parental rights is in the best interests of a juvenile:

The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following 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) (2022).

Mother makes no argument that the trial court failed to consider any of these statutorily required criteria, and she does not challenge any of the trial court's dispositional findings of fact. While Kevin's relationship with his maternal grandmother may be a relevant consideration, the record contains no evidence that any party presented evidence regarding this relationship at the hearing. Thus, the trial court did not abuse its discretion by failing to consider Kevin's relationship with his maternal grandmother when determining whether terminating Mother's parental rights was in Kevin's best interests.

### **III. Conclusion**

Because the trial court's findings of fact support its conclusion that grounds existed to terminate Mother's parental rights to Kevin, and because the trial court did not abuse its discretion in determining that terminating Mother's parental rights was in Kevin's best interests, the trial court's order is affirmed.

**AFFIRMED.**

Judges HAMPSON and WOOD concur.

Report per Rule 30(e).