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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-246

Filed 21 March 2023

Mecklenburg County, Nos. 19 JT 117–18

IN THE MATTER OF: A.D., B.D.

Appeal by respondent-mother from order entered 2 December 2021 by Judge Roy H. Wiggins in Mecklenburg County District Court. Heard in the Court of Appeals 27 February 2023.

Senior Associate County Attorney Keith S. Smith for Mecklenburg County Department of Social Services, Division of Youth and Family Services.

Alston & Bird LLP, by Matthew P. McGuire and Michelle C. Prendergast, for Guardian ad Litem.

J. Thomas Diepenbrock for respondent-appellant mother.

PER CURIAM.

Respondent-mother appeals from an order terminating her parental rights to A.D. (“Aiden”)¹ and B.D. (“Blair”) (collectively “the children”). After careful consideration, we conclude that the order should be affirmed.

Background

¹ Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

Aiden was born in March 2012, and Blair was born in December 2012. On 12 March 2019, the Mecklenburg County Department of Social Services, Division of Youth and Family Services (“YFS”) obtained nonsecure custody of the children,² and filed a juvenile petition alleging them to be neglected and dependent juveniles. The petition alleged that YFS had been involved with the family since 2013 due to issues of domestic violence between respondent-parents,³ substance abuse, and unstable housing. YFS received a referral in May 2016 that alleged respondent-father had broken respondent-mother’s nose. YFS also received two referrals in March 2018, reporting that respondent-father had punched respondent-mother in the face, had hit respondent-mother in the children’s presence, and had pushed the children down when they tried to intervene. Based on the March 2018 referrals, YFS recommended respondent-parents engage in domestic violence and substance abuse services, but neither respondent did so.

The petition further alleged that in January 2019, YFS received a report that the family was residing with the paternal grandmother, and respondent-father had assaulted her. On 8 February 2019, YFS transferred the case to the family intervention unit, and respondent-mother agreed to engage in domestic violence and substance abuse services and to obtain separate housing from respondent-father. YFS

² The children’s older half-sibling was also taken into nonsecure custody, but she is not a subject of this appeal.

³ Respondent-father is not a party to this appeal.

then received a report on 25 February 2019 that respondent-father had pushed respondent-mother off a couch. A few days later, respondent-mother agreed to obtain a domestic violence protective order against respondent-father, shield the children from domestic violence, and engage in her family service agreement. On 28 February 2019, respondent-mother obtained an ex parte domestic violence protective order against respondent-father but was unable to get the order extended. On 6 March 2019, YFS received another report that respondent-father had punched respondent-mother.

Following a hearing on 3 July 2019, the trial court entered an order on 7 August 2019 adjudicating the children to be neglected and dependent juveniles. Respondent-mother was ordered to comply with an Out of Home Family Service Agreement (“OHFSA”), which required her to participate in a domestic violence assessment with the Women’s Commission and follow recommendations; obtain and maintain stable housing free from domestic violence; submit to random drug testing within 24 hours as requested by YFS; and participate in parenting classes. The trial court ordered that there be no contact between respondent-parents.

Following a permanency planning hearing on 7 January and 4 February 2020, the trial court entered an order on 11 February 2020 finding that respondent-mother was in compliance with her OHFSA. However, the trial court was “unable . . . to trust [respondent-mother] in that she has admitted to not following the specifics of the [c]ourt’s orders during at least two review periods.” Aiden reported that respondent-

mother had allowed respondent-father to speak to him and Blair on the telephone, and a paternal cousin reported that respondent-mother had been staying with respondent-father “on occasion.” Respondent-mother admitted to taking the children to her home between October 2019 and January 2020 in violation of the court’s visitation order. The trial court found that the “widely differing stories about contact” between respondent-parents and the children were “problematic” due to the history of domestic violence. The primary permanent plan was set as reunification, with secondary permanent plans of adoption and guardianship.

Following a permanency planning hearing on 31 August 2020, the trial court entered an order on 22 September 2020 finding that while respondent-mother had “primarily complied” with her case plan, she had repeatedly lied to the court and had perjured herself. Respondent-parents had lived together from December 2019 to February 2020 and agreed to keep their relationship hidden from the court. Since February 2020, respondent-parents had “engaged in an on-again/off-again relationship.” The primary permanent plan for the children was changed to adoption, with secondary permanent plans of reunification and guardianship.

Following a permanency planning hearing on 19 January 2021, the trial court entered an order on 28 January 2021 finding that respondent-mother had contacted law enforcement on 26 November 2020 after respondent-father appeared at her residence. This was “some evidence” that she understood “the toxic nature of [respondent-parents’] relationship[.]” The trial court found that respondent-mother

had stable housing and would have the next 60 days to demonstrate her ability to reunify with the children.

Following a permanency planning hearing on 17 March 2021, the trial court entered an order on 30 March 2021. The trial court found that since January 2021, respondent-mother had not made progress on her OHFSA, had not fully cooperated with YFS on her OHFSA, and had only been sporadically available to YFS.

On 14 April 2021, YFS filed a petition to terminate respondent-mother's parental rights to the children.⁴ YFS alleged grounds existed to terminate respondent-mother's parental rights for neglect, willful failure to make reasonable progress, and failure to pay a reasonable portion of the cost of the juveniles' care. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3) (2021).

Following a permanency planning hearing on 2 July 2021, the trial court entered an order on 14 July 2021 finding that respondent-mother had not made progress on her OHFSA and had only been sporadically available to YFS. The court noted that respondent-mother had expressed interest in “signing conditional relinquishments, and expressed this as recently as July 1, 2021 to the permanency planning social worker.” In addition, she had missed several visits with the children, and at two scheduled visits, on 4 March and 28 April 2021, there were “concerns about her sobriety[.]” Respondent-mother's visitation with the children was suspended.

⁴ YFS petitioned to terminate both of respondent-parents' parental rights; however, only the allegations concerning respondent-mother are before us.

The petition to terminate respondent-mother's parental rights came on for hearing on 7 September and 8 October 2021. The trial court entered an order on 2 December 2021 adjudicating the existence of all three grounds for termination alleged by YFS, and concluded that it was in the children's best interests that respondent-mother's parental rights be terminated. Accordingly, the trial court terminated her parental rights to Aiden and Blair. Respondent-mother timely filed notice of appeal.

Analysis

On appeal, respondent-mother challenges the trial court's adjudication of the existence of grounds to terminate her parental rights to Aiden and Blair.

When reviewing the trial court's adjudication of grounds for termination, we examine whether the court's findings of fact are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Any unchallenged findings are deemed supported by competent evidence and are binding on appeal. The trial court's conclusions of law are reviewed de novo.

In re Z.G.J., 378 N.C. 500, 508–09, 862 S.E.2d 180, 187 (2021) (cleaned up). “[A]n adjudication of any single ground in N.C.[Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019).

Under N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights if it concludes the parent has neglected the juvenile within the meaning of § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is defined, in pertinent part, as a juvenile “whose parent, guardian, custodian or caretaker . . . [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." *Id.* § 7B-101(15). "[I]f 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 (2016).

"[E]vidence 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[.]" but "[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." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). The "determinative factors" in assessing the likelihood of a repetition of neglect are "the best interests of the child and the fitness of the parent to care for the child at the time of the termination proceeding." *Z.G.J.*, 378 N.C. at 509, 862 S.E.2d at 188 (emphasis omitted) (citation omitted).

Respondent-mother does not contest the fact that the children were previously adjudicated neglected and does not assert that any of the trial court's findings are not supported by the evidence. Rather, respondent-mother argues that neither the evidence nor the findings support the trial court's determination that there was a probability of future neglect because she was compliant with her case plan.

Specifically, respondent-mother contends she corrected the domestic violence issue by completing an assessment and ending the relationship with respondent-

father by the time of the termination hearing. She points to the fact that the trial court found that substance abuse was not a concern in its 28 January 2021 permanency planning order; although respondent-mother concedes that she was intoxicated at the time of the scheduled 28 April 2021 visitation, she notes that all of her urine screen results were negative. Respondent-mother also asserts that she completed the parenting education component of her case plan, maintained suitable housing “[f]or much of the life of the case,” and was in the process of searching for a suitable home at the time of the termination hearing.

It is well established that “a parent’s compliance with his or her case plan does not preclude a finding of neglect.” *In re J.J.H.*, 376 N.C. 161, 185, 851 S.E.2d 336, 352 (2020). While respondent-mother complied with many of the components of her case plan, the concerns that resulted in the children’s placement in YFS custody continued to exist at the time of the termination hearing on 7 September and 8 October 2021.

The trial court’s unchallenged findings reflect that YFS had been involved with the family since 2013 due to issues of domestic violence and substance abuse. The issues that led to Aiden and Blair’s removal in March of 2019 were domestic violence, substance abuse, and parenting concerns. Respondent-mother was ordered to participate in a domestic violence assessment and follow recommendations; obtain and maintain stable housing free from domestic violence; submit to random drug testing within 24 hours as requested by YFS; and participate in parenting classes. While the trial court found respondent-mother had completed a domestic violence

program, a substance abuse program, and parenting classes, it also found that respondent-mother failed to “demonstrate[] that she has implemented the skills or tools provided in the programs and services she completed.”

In unchallenged findings, the trial court found that respondent-parents admitted to having a “volatile relationship and a history of domestic violence.” Respondent-mother completed a domestic violence assessment in 2019; however, she continued her relationship with respondent-father despite the trial court’s order that she have no contact with him. The 22 September 2020 permanency planning order indicates respondent-parents lived together from December 2019 to February 2020, agreeing to keep their relationship hidden from the court, and that for several months, they had “engaged in an on-again/off-again relationship.” At the time of the termination hearing, respondent-mother lacked the ability to “recognize how the domestic violence, dishonesty to the [c]ourt, and her inconsistency ha[d] impacted the children.”

The trial court’s unchallenged findings also indicate that respondent-mother failed to submit to random drug screens during the six months preceding the termination hearing. On 28 April 2021, respondent-mother was scheduled for a visitation with Blair that had to be canceled because respondent-mother was intoxicated. Moreover, she missed at least eight or nine random drug screens in 2021, and the trial court was unable to confirm her sobriety at the time of the termination hearing. Thus, the trial court found that respondent-mother had “not demonstrated

sobriety.” Furthermore, the trial court’s unchallenged findings establish that respondent-mother lacked housing at the time of the termination hearing and had not been consistent in visiting the children over the preceding six months.

Ultimately, respondent-mother was unable to apply the skills she learned in the programs and services she completed pursuant to her OHFSA. She lacked the ability to provide proper care, supervision, and discipline for Aiden and Blair at the time of the termination hearing despite having over two-and-a-half years in which to overcome the obstacles preventing her from doing so.

We conclude that the trial court’s findings support its determination that a repetition of neglect was likely if the children were returned to respondent-mother’s care, and we affirm the trial court’s determination that respondent-mother’s parental rights to the children were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(1). We decline to address respondent-mother’s arguments challenging the trial court’s conclusion that grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and (3).

Respondent-mother does not challenge the trial court’s determination that it was in the children’s best interests that her parental rights be terminated. Accordingly, we affirm the trial court’s order.

AFFIRMED.

Panel consisting of Judges ZACHARY, MURPHY, and ARROWOOD.

Report per Rule 30(e).