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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-687

Filed 16 May 2023

Guilford County, Nos. 18-JT-96, 18-JT-95, 18-JT-94

IN THE MATTER OF: J.A.M., K.W.M., R.L.A.

Appeal by Respondent-Mother from Order entered 13 May 2022 by Judge Tonia A. Cutchin in Guilford County District Court. Heard in the Court of Appeals 25 April 2023.

Mercedes O. Chut for Petitioner-Appellee Guilford County Department of Health and Human Services.

Robert W. Ewing for Respondent-Appellant Mother.

Kathleen Arundell Jackson for Guardian Ad Litem.

RIGGS, Judge.

Appellant-Mother appeals from the trial court's order terminating her parental rights to her minor children, J.A.M., K.W.M., and R.L.A. The trial court's termination order entered on 13 May 2022, was decided on grounds of neglect and dependency. Appellant-Mother argues that the trial court's findings of fact and conclusions of law failed to address the fact that Mother retained parental rights to her two younger children at the time of the termination hearing, and this constituted a material

conflict in evidence regarding her ability to be fit and proper to parent and have custody of J.A.M., K.W.M., and R.L.A. After careful review of the record, we hold that the trial court's findings of fact support its conclusions of law that grounds existed for terminating Appellant-Mother's parental rights to J.A.M., K.W.M., and R.L.A. Therefore, we affirm the trial court's order for termination of parental rights.

I. Facts and Procedural History

Appellant-Mother ("Mother") has five minor children, only three of whom are the subject of this proceeding: J.A.M., born in June of 2018; K.W.M., born in February 2017; and R.L.A., born in August of 2012.¹ No father is identified on any of the children's birth certificates. However, J.A.M.'s and K.W.M.'s father did establish paternity through DNA testing on 15 October 2018. J.A.M.'s and K.W.M.'s father was properly served with a summons and petition for termination of his parental rights, failed to respond, and was not present at the termination hearing. The putative father of R.L.A. was properly served by publication, failed to respond, was not present at the termination hearing, and was alleged to be deceased.

Mother had numerous interactions with children's protective services ("CPS") dating back to 2014. From 2014 to 2018, three CPS complaints were made against Mother alleging sexual abuse, neglect and dependency, and Mother's untreated mental illness. Mother's first substantiated CPS complaint from 2014 involved a

¹ Mother's three minor children at issue in this case, J.A.M., K.W.M., and R.L.A., collectively, will be referred to as "the children."

domestic violence altercation between Mother, the children's maternal grandmother (hereinafter, "MGM"), and R.L.A.'s putative father. The complaint alleged the use of a knife in the altercation.

On 14 September 2018, Guilford County Department of Health and Human Services ("DHHS") received a CPS complaint alleging Mother and the children were homeless. Mother had been residing with MGM, but MGM then relocated to Charlotte. As a result, Mother lost her housing and moved to a local homeless shelter with the children. The CPS complaint also alleged that Mother "did not seem emotionally stable to provide care" to the children, and that she "presented as angry and overwhelmed." The staff observed the children running around the shelter unsupervised, and Mother had "roughly grabbed" one of the children out of a playpen. Staff also witnessed Mother lay across a table at the shelter and state she was "overwhelmed and unable" to care for the children.

During DHHS' interview of Mother on 14 September 2018, she displayed "disorganized thoughts and speech," delayed responses to the DHHS worker's questions, and then with non-responsive answers. Mother also exhibited a "high degree of paranoia" throughout the DHHS interview. Mother told DHHS she had to leave MGM's home because MGM was being violent with her. Mother disclosed that she and MGM had a physical altercation the week prior, and that MGM hit R.L.A. on the back with a switch on another occasion, which left marks on his back. Mother also disclosed she left MGM's home because her adult sister choked R.L.A.

Consequently, Mother stated she refused to live with MGM, because she no longer felt safe.

Mother also told the DHHS worker that she had not taken her psychotropic medications since November 2017. Mother stated she was “misdiagnosed” and that she was “totally fine,” besides having a “little normal depression.” However, Mother’s medical records revealed she was diagnosed in October 2017 with bipolar disorder, post-traumatic stress disorder, cannabis abuse disorder, psychosis, and resolved paranoid schizophrenia. Due to imminent concerns for the children’s safety, DHHS placed the children with a temporary service provider and scheduled a mental health assessment for Mother.

On 17 September 2018, Mother did not keep the appointment for her mental health assessment even though DHHS had provided transportation. On 18 September 2018, DHHS received the children’s medical records, which revealed they had missed several medical appointments and were behind on their immunizations.

On 19 September 2018, DHHS filed petitions to remove the children from Mother’s care on neglect and dependency grounds. Mother was also appointed a Guardian Ad Litem (“GAL”) for juvenile court proceedings. The DHHS’ petition alleged neglect and dependency based on: Mother’s homelessness; domestic violence; Mother’s exhibited mental health issues; Mother’s inability to provide adequate care and supervision to the children, and Mother’s lack of child development skills and

parenting skills. On 14 February 2019, the children were adjudicated as neglected and dependent in Guilford County District Court.

Mother was given a services agreement with DHHS, which required her to, among other things, obtain appropriate housing, attend parenting classes and substance abuse treatment, demonstrate parenting skills learned during weekly visits with her children, submit to random drug screens and unannounced home visits, complete a psychiatric evaluation and follow all recommendations, maintain employment, pay child support, and participate in a domestic violence assessment, including a commitment to follow all recommendations if she was the victim of domestic violence.

By 19 December 2019, the juvenile court changed the children's permanent plan to adoption, with a concurrent secondary plan for reunification, due to Mother's lack of progress on her reunification case plan. On 11 May 2020, DHHS filed a petition to terminate Mother's parental rights due to her lack of progress toward correcting the conditions necessary to achieve reunification.

During the pendency of the case, Mother gave birth to two additional children: Z.J., born in January of 2020, and J.J., born in May of 2021. A petition was filed removing Z.J. from Mother's care due to concerns of "neglect, injurious environment and dependency." However, this petition was later dismissed in March 2020 because physical custody was awarded to Z.J.'s biological father (hereinafter, "J.H."). With respect to J.J., Mother and J.J.'s purported father, J.H., have a history of domestic

violence involving police and court proceedings for personal protection orders against each other. J.J. remains in the physical custody of Mother.

On 4 October 2021, the trial court held an adjudication hearing and heard evidence regarding DHHS' petition for termination of Mother's parental rights. Mother was present and testified at the hearing. The assigned Guilford County DHHS foster care worker also testified. Despite the children being in foster care for three years, Mother failed to make significant progress in completion of her services agreement and reunification case plan with DHHS. At the close of DHHS' case in chief, Mother's trial counsel moved for dismissal of the case, and the trial court denied Mother's motion to dismiss.

On 13 May 2022, the trial court entered an order terminating Mother's parental rights to the children, and Mother timely appealed.

II. Standard of Review

This Court reviews a trial court's orders for termination of parental rights to determine if 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 Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). In termination of parental rights cases, a trial court's conclusions of law are reviewed de novo. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008). The trial court's findings of fact are conclusive on appeal when supported by competent evidence, even if that evidence could sustain contrary findings. *In re L.T.R.*, 181 N.C. App. 376, 381, 639 S.E.2d 122,

125 (2007) (internal quotations and citations 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).

III. Analysis

A. Termination Grounds for Neglect

Article 11 of Chapter 7B (Juvenile Code) of the North Carolina General Statutes governs termination of parental rights proceedings. N.C. Gen. Stat. §§ 7B-1100-1111 (2021). Section 7B-1111 sets forth the requirements trial courts must follow when a petition has been filed for termination of parental rights. N.C. Gen. Stat. § 7B-1111. The trial court may terminate a parent’s parental rights for neglect “if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101.” N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is: “[a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline . . . [or] . . . [h]as not provided or arranged for the provision of necessary medical or remedial care . . . [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) (2021).

When termination of parental rights is based upon evidence of neglect, Subsection 7B-101(15) “requires a showing of neglect at the time of the termination hearing or, if 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).

“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). When parents fail to make progress in completion of a services agreement or case plan, this “is indicative of a likelihood of future neglect.” *In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020) (citations omitted). “[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 M.A.*, 374 N.C. at 869, 844 S.E.2d at 920 (citations omitted).

B. Termination Grounds for Dependency

For termination on grounds of dependency, Section 7B-1111(a)(6) requires that the evidence establish the following:

That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness,

organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6).

Subsection 7B-101(9) defines a dependent juvenile as: “[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) the juvenile’s parent, guardian, or custodian is unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” N.C. Gen. Stat. § 7B-101(9) (2021).

On appeal, Mother challenges the trial court’s findings and conclusions that grounds existed to terminate her parental rights under North Carolina General Statutes § 7B-1111(a)(1) and (6). Mother contends that the trial court’s order terminating her parental rights must be vacated because it failed to resolve the material conflict in evidence—specifically, she alleges a material conflict between her fitness as a parent of Z.K. and J.J. and the court’s conclusion that she was unfit to have custody of her remaining three children at the time of the termination hearing. We disagree.

In this case, Mother became involved with Guilford County DHHS in regard to her parenting and care to the children named in the petitions on 19 September 2018.

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At that time, Z.J. and J.J. were not yet born. DHHS offices² became immediately involved with both Z.J. and J.J. after their births. While the neglect petition relating to Z.J. was dismissed, the child was ultimately placed in her father's (J.H.) custody, not Mother's. And although J.J. currently resides with Mother in Mecklenburg County, Mother has an open and ongoing services case with Mecklenburg County DHHS based on concerns of injurious environment, neglect, and dependency. At the time of the termination hearing, no pending matters existed before the Guilford County District Court regarding the care or custody of Z.J. or J.J. While DHHS has not sought removal of those two younger children, it does not follow Mother is *per se* capable of caring for her three older children at issue in this case. Mother's asserted material conflict rests on assumption that is not justified as a matter of law or on the facts of this case.

Next, competent evidence establishes: (1) Mother neglected her children; and (2) the children were dependent and neglected within the statutory meaning of N.C. Gen. Stat. § 7B-101. The trial court's order terminating Mother's parental rights entered on 13 May 2022, included the following pertinent findings:

22. Grounds exist to terminate the parental rights of [Mother], pursuant to N.C.G.S. § 7B-1111(a)(1), given that . . . [Mother] neglected the juveniles, the neglect continues to date, and there is likelihood of the repetition of neglect if the juveniles were returned to any parent, as follows:

² The CPS complaint for Z.J. was with Guilford County DHHS and the CPS complaint for J.J. was with Mecklenburg County DHHS.

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a. . . . [Mother's] past neglect of the juveniles was proven by clear, cogent, and convincing evidence at the Adjudication on February 14, 2019.

b. . . . [Mother's] neglect of the juveniles has been ongoing throughout the present in that . . . [Mother] has failed to fully and successfully address her mental health issues, participate fully in psychological therapy and treatment, complete the Health Start Program, consistently comply with requested drug screens, obtain and maintain appropriate housing, show appropriate parenting skills even after completion of services designed to address that issue, fully address and resolve domestic violence issues or obtain and maintain stable and appropriate housing for herself and the juveniles. She has failed to comply with mental health services, is no longer participating with the Assertive Community Treatment Team (ACT Team), has not begun to participate in peer support . . . and has failed to participate in outpatient therapeutic services . . . [Mother] has failed to perform the natural and legal parental obligations of care and support for the juveniles. Given . . . [Mother's] history of neglect . . . [Mother's] failure to fully comply with her service agreement and participate in services, it is likely that . . . [Mother's] neglect will continue in the future.

25. Grounds exist to terminate parental rights of [Mother] pursuant to N.C.G.S. § 7B-1111(a)(6), given that she is incapable of providing for the proper care and supervision of the juveniles, such that the juveniles are dependent juveniles within the meaning of N.C.G.S. § 7B-101, and there is a reasonable probability that such incapability will continue for the foreseeable future, with incapability resulting from mental health issues and any other cause or condition that renders . . . [Mother] unable or unavailable to parent the juveniles and . . . [Mother] lacks an appropriate alternative child care arrangement.

a. The conditions that have rendered . . . [Mother] unable or unavailable to parent the juveniles are her unwillingness to do so, her lack of follow-through with the

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recommendations of . . . [DHHS] and other assessing agencies, her unwillingness to fully comply with her case plan, her inability to resolve ongoing domestic violence issues, mental health issues and her lack of stable and appropriate housing . . . [Mother] has been unable to provide a stable and safe home for the juveniles and has been unable to progress to unsupervised visits with her children in approximately three years of working a case plan. She continues to fail to fully address the issues that brought the juveniles into custody of . . . [DHHS]. She has also failed to provide any acceptable alternative to child care arrangement. Given that . . . [Mother] has not fully engaged in services nor resolved the issues that brought the juveniles into custody for approximately three years now, there is a reasonable likelihood that the conditions that render . . . [Mother] incapable of adequately parenting will continue for the foreseeable future.

Here, Mother has failed to challenge any findings of fact by the trial court regarding her past neglect, potential future neglect, or dependency of the children. Consequently, we are bound by these unchallenged findings on appeal. *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. Furthermore, the record is replete with evidence of Mother's lack of progress over the course of three years in the reunification plan with her children. As recounted in the trial court's findings, despite the duration of time, Mother still failed to make progress for completion of her case plan, which "is indicative of a likelihood of future neglect." *In re M.A.*, 374 N.C. at 870, 844 S.E.2d at 921.

Although unchallenged and thus binding on appeal, this Court notes the findings that Mother had not obtained independent or suitable housing and was residing with MGM at the time of the termination hearing, despite their violent and

volatile history. Mother also continued her intimate relationship with J.H. despite a “no contact” order prohibiting interactions between them. Indeed, during an unannounced home visit, the DHHS worker testified that J.H. was hiding in the closet and then ran out the front door. Thus, Mother’s persistent pattern of being around people that create an injurious environment for both her and her children can, in the context of this case, provides support for the trial court’s conclusion that, “there is a reasonable probability” that she will be “incapable of providing for the proper care and supervision,” of her children in the foreseeable future if left in her custody. N.C. Gen. Stat. §§ 7B-101(15) and 7B-1111(a)(1) and (6).

Mother also failed to comply with her psychological evaluation recommendation for outpatient substance abuse treatment, psychotherapy, and medication management. These unchallenged findings also are competent evidence considered by the trial court that Mother is “incapable of providing the proper care and supervision” to her children or make the needed corrections which brought her children into foster care. N.C. Gen. Stat. § 7B-1111(a)(6). Thus, these findings support the trial court’s conclusion that “reasonable probability that such incapability will continue for the foreseeable future.” *Id.*

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IV. Conclusion

For the foregoing reasons, we affirm the 2022 Order Terminating Parental Rights by the trial court.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).