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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-760

Filed 16 May 2023

Alleghany County, No. 20 JT 03

IN THE MATTER OF: C.P.

Appeal by Respondent-Father from order filed 15 June 2022 by Judge William F. Brooks in Alleghany County District Court. Heard in the Court of Appeals 26 April 2023.

*Peter Wood for Respondent-Appellant-Father.*

*TLG Law, by Ty Kimmell McTier, for Petitioner-Appellee Guardian ad Litem.*

*No brief filed on behalf of Petitioner-Appellee Alleghany Department of Social Services.*

CARPENTER, Judge.

Respondent-Father appeals from an order (“Order”) terminating his parental rights to the minor child, Carol.<sup>1</sup> Carol’s biological mother (“Mother”), whose rights

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<sup>1</sup> A pseudonym is used to protect the identity of the minor child. See N.C. R. App. P. 42(b).

were also terminated by the Order, is not a party to this appeal. On appeal, counsel for Respondent-Father submitted a no-merit brief pursuant to Rule 3.1(e). After careful and independent review of the record, we affirm the Order.

**I. Factual & Procedural Background**

On 24 January 2020, Carol was born to Mother and Respondent-Father in Harnett County. On 25 February 2020, Mother admitted Carol to Wake Medical Center where she was diagnosed with failure to thrive and caloric malnutrition. Carol gained weight during her hospital stay and was discharged on 4 March 2020. On 12 March 2020, a follow-up appointment revealed that Carol's weight had again decreased in Mother's care. Additionally, acid-reflux medicine prescribed to Carol was filled but not administered.

Due to concerns about Mother's functioning and ability to care for Carol, Mother and Carol moved to Alleghany County to reside with Carol's paternal grandmother. Respondent-Father lived across the street but could not contact Mother or Carol due to a domestic violence order. Although Mother had to be prompted to feed and care for Carol, she was found alone with Carol during a home visit on 20 March 2020, which resulted in Alleghany County Department of Social Services ("ACDSS") taking custody of Carol.

While Carol was hospitalized at Wake Medical Center, a report was filed with Harnett County Department of Social Services ("HCDSS"), and HCDSS responded. Before being allowed to leave the hospital with Carol, Mother was required to agree

to a case plan, which included Mother moving in with Carol's paternal grandmother in Alleghany County, and Mother not being left alone with Carol. Upon Mother's move to Alleghany County, the case was transferred from HCDSS to ACDSS on 13 March 2020, and updated to reflect the family was "in need of in-home services."

On 20 March 2020, ACDSS attempted a home visit and found Carol alone with Mother, in contravention of the case plan. The trial court authorized ACDSS to take non-secure custody of Carol on the grounds she was neglected because she did not receive proper care and lived in an environment injurious to her welfare. On 16 June 2020, the trial court adjudicated Carol to be neglected as defined by N.C. Gen. Stat. § 7B-101(15).

Respondent-Father entered into a case plan with ACDSS in April 2020, in which he agreed to complete an assessment with Daymark Recovery Services ("Daymark") to determine if he had mental health or substance use needs and to recommend treatment options, if necessary. On 14 April 2020, Daymark diagnosed Respondent-Father with antisocial personality disorder, amphetamine use disorder, cannabis use disorder, and alcohol use disorder. Based on the diagnoses, Daymark recommended Respondent-Father attend twenty hours of substance use group treatment, peer support for assistance with housing and employment, and individual therapy. Prior to his incarceration, however, Respondent-Father did not make efforts to work on his case plan, nor did he take drug classes or submit to drug screens.

Respondent-Father had six video or telephone visits with Carol, with the last visit occurring on 14 May 2020.

On 18 May 2020, Respondent-Father was arrested and charged with assault by strangulation and additional domestic-violence-related crimes against Mother. While Respondent-Father was held in pretrial detention, ACDSS social workers visited him monthly to discuss Carol and the pending case.

Respondent-Father offered his aunt and mother as possible placements for Carol. ACDSS indicated to the trial court that the agency's position was both potential placement options were inappropriate. On 4 August 2020, the trial court entered an order placing Carol with the maternal grandparents in Ohio.

Until the trial court ceased reunification efforts with Respondent-Father on 17 August 2021, the trial court permitted some form of visitation or supervised contact between Respondent-Father and Carol. The trial court continued to permit contact while Respondent-Father was in jail, "if such capabilities [were] available to both the detention center and [ACDSS]"; however, ACDSS was unable to arrange video visits from jail due to complications such as cost to the foster parents and ACDSS's inability to supervise calls. Additionally, Respondent-Father stated there were no parenting class options available in jail due to COVID, and he had difficulty working on his case plan due to his incarceration. On 16 August 2020, Respondent-Father pleaded guilty to crimes against the Mother and was transferred to prison to serve the remainder of his sentence, with a projected release date of March 2024.

On 8 April 2021, ACDSS filed a petition to terminate the parental rights of both parents based on five statutory grounds: neglect; willful failure to make reasonable progress; willful failure to reasonably contribute to the juvenile's expenses, despite the ability to do so; incapability of preventing dependency; and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), (6), (7) (2021). The trial court conducted the termination hearing on 1 April 2022.

Testimony from the hearing shows Respondent-Father paid no child support while incarcerated, nor did he write or send gifts to Carol. Respondent-Father testified he only received \$100 a month from his mother, felt that Carol was too young to read any letters, and did not know the mailing address for ACDSS. At the time of the termination hearing, Respondent-Father was “[a]bout halfway” through a forty-hour domestic violence class in prison. Respondent-Father stated that he was only allowed to take one class at a time and planned to start a rehab program after completing the domestic violence class.

Testimony also tended to show that Carol has a strong bond with the maternal grandparents and refers to them as “mom and dad”; however, Carol has no bond with Respondent-Father, though he would like to have a relationship with Carol once released from prison. Both grandparents are employed, have the financial resources to care for Carol, and plan to adopt her when legally able.

Before terminating both parents' parental rights, the trial court determined: (1) the alleged five grounds existed as to both parents and (2) that termination of

parental rights was in the best interests of Carol.. Respondent-Father filed written notice of appeal on 1 July 2022.

## **II. Jurisdiction**

This Court has jurisdiction over this matter from an order terminating parental rights pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

## **III. Standard of Review**

“We review a trial court’s adjudication . . . to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citation and internal quotations omitted). “The trial court’s conclusions of law are reviewable *de novo* on appeal.” *In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006) (citation and internal quotations omitted).

“The trial court’s determination of ‘whether terminating the parent's rights is in the juvenile’s best interest[s]’ under [N.C. Gen. Stat.] § 7B-1110(a) ‘is reviewed solely for abuse of discretion.’” *In re A.M.O.*, 375 N.C. 717, 720–21, 850 S.E.2d 884, 887–88 (2020) (quoting *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698 (2019)).

## **IV. Analysis**

Appellate counsel for Respondent-Father filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure and advised Respondent-Father of his right to file written arguments on his own behalf. *See* N.C. R. App. P. 3.1(e). Respondent-Father did not avail himself of this right.

On appeal, counsel for Respondent-Father cannot identify any issues with sufficient merit to base an argument for relief. Thus, he respectfully requests this Court to conduct an independent review of the record and determine if any meritorious issues were overlooked and decide if any error or abuse of discretion was committed by the trial court. *See In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019) (interpreting Rule 3.1 to compel appellate courts to conduct an independent review of the potential issues raised in a no-merit brief filed by counsel).

Respondent-Father's counsel identified two issues that could arguably support the appeal, including whether: (1) the trial court's findings of fact support the trial court's grounds for termination of Respondent-Father's parental rights; and (2) the trial court abused its discretion in finding that permanent placement was in the best interests of the child.

#### **A. Adjudication**

The trial court must find "clear, cogent, and convincing evidence" that grounds on which to terminate parental rights exist during the adjudication phase. N.C. Gen. Stat. § 7B-1109(f) (2021). "[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).

Among other reasons, the trial court may find grounds to terminate parental rights if it finds the juvenile has been neglected, as defined in N.C. Gen. Stat. § 7B-101 (2021). N.C. Gen. Stat § 7B-1111(a)(1) (2021). A neglected juvenile is one who

“does not receive proper care, supervision, or discipline” from the juvenile’s parent, who is not provided “necessary medical or remedial care,” or lives in an environment injurious to his welfare. N.C. Gen. Stat. § 7B-101(15)(a), (c), (e).

The evidence shows Carol was removed from Mother’s care because she was not properly fed and had lost weight, which resulted in a diagnosis of failure to thrive and caloric malnutrition. Further, Respondent-Father was unable to visit or assist with Carol’s care because of ongoing domestic violence between himself and Mother, which resulted in a domestic violence order. On 20 March 2020, Respondent-Father knew Carol was left alone with Mother and knew that Mother could not properly care for Carol.

ACDSS gave Respondent-Father a case plan to address his domestic violence issues, substance use issues, mental and emotional health issues, and parenting skills needs, but he failed to comply with the case plan prior to incarceration due to work or transportation issues. Additionally, Respondent-Father pleaded guilty to assaulting Mother, resulting in his incarceration until 2024. This evidence supports the trial court’s finding that Carol had been neglected by Respondent-Father at the time of the initial adjudication hearing. *See* N.C. Gen. Stat § 7B-1111(a)(1); *see also* N.C. Gen. Stat. § 7B-101.

Social workers provided clear, cogent, and convincing evidence that Respondent-Father continued in his neglect, and there was a high probability of future neglect. “Termination of parental rights . . . 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) (citation omitted). The court must 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). “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, 921–22 (2020) (citation omitted).

An ACDSS social worker testified that although Respondent-Father was halfway through a domestic violence class at the time of the termination hearing, he failed to work on any other part of his case plan prior to his incarceration. Ample evidence supports the trial court’s conclusions of law that Carol was likely to encounter future neglect if Carol was returned to Respondent-Father’s care. *See In re M.A.*, 374 N.C. at 870, 844 S.E.2d at 921–22.

Therefore, the trial court’s findings by clear, cogent, and convincing evidence support its conclusions of law that Respondent-Father continued in his neglect and future neglect was likely, which satisfies N.C. Gen. Stat. § 7B-1111(a). *See In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232; *see also In re M.A.*, 374 N.C. at 870, 844 S.E.2d at 921–22. Thus, the trial court did not err when it found at least one ground existed to terminate Respondent-Father’s parental rights pursuant to N.C. Gen. Stat.

§ 7B-1111(a). *See In re E.H.P.*, 372 N.C. at 395, 831 S.E.2d at 53; *see also In re C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

### **B. Disposition**

After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. The court may consider any evidence, including hearsay evidence as defined in [N.C. Gen. Stat. §] 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) (2021).

At the dispositional phase of the TPR hearing, the trial court made the required findings. Carol was two years old and had been in adoptive placements for all but two months of her life. Evidence shows that Carol did not have a bond with Respondent-Father, Respondent-Father's last contact with Carol was 14 May 2020, and he only had six visits with Carol prior to incarceration.

Terminating Respondent-Father's parental rights would aid in the accomplishment of the permanent plan established for Carol because the bond between Carol and her maternal grandparents in Ohio was "good," Carol referred to

them as “mom and dad,” they were able to support her financially, Carol was on track developmentally in their home, and they plan to adopt Carol when legally able.

The trial court made written findings for each factor, all of which are supported by the record, when it concluded that terminating Respondent-Father’s parental rights was in the best interests of Carol. *See* N.C. Gen. Stat. § 7B-1110(a). Accordingly, the trial court did not abuse its discretion during the dispositional phase. *See In re A.M.O.*, 375 N.C. at 720–21, 850 S.E.2d at 887–88.

## **V. Conclusion**

After carefully and independently reviewing the record and the issues identified by counsel, we are satisfied that the trial court’s findings of fact are supported by clear, cogent, and convincing evidence, and the findings in turn, support the trial court’s conclusion that grounds existed to terminate the parental rights of Respondent-Father. Furthermore, we discern no abuse of discretion in the trial court’s determination that termination was in the best interests of the child. Therefore, we affirm the Order.

**AFFIRMED.**

Judges HAMPSON and STADING concur.

Report per Rule 30(e).