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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-552

Filed 16 May 2023

Union County, No. 19JT176

IN RE: H.M.

Appeal by Respondent-Mother from Orders entered 22 March 2022 and 6 April 2022 by Judge William F. Helms, III in Union County District Court. Heard in the Court of Appeals 26 April 2023.

*Perry, Bundy, Plyler & Long, LLP, by Ashley J. McBride, for Petitioner-Appellee.*

*J. Thomas Diepenbrock for Respondent-Appellant Mother.*

*Ward and Smith, P.A., by Christopher S. Edwards, Guardian ad litem.*

HAMPSON, Judge.

**Factual and Procedural Background**

Respondent-Mother appeals from Orders terminating her parental rights in her minor child pursuant to N.C. Gen. Stat. § 7B-1111. The Record before us tends to reflect the following:

On 18 October 2019, Union County Department of Social Services (DSS) filed a juvenile petition alleging the minor child to be a neglected and dependent juvenile. Following a hearing on 14 July 2020, the trial court entered an order on 18 August 2020 adjudicating the minor child to be a neglected juvenile based, in part, on Respondent-Mother admitting to temporarily leaving the minor child in the care of others while she uses methamphetamines. The minor child was placed in the custody of DSS on 21 October 2020.

On 19 October 2021, DSS filed a Petition to terminate Respondent-Mother's parental rights to the minor child. DSS alleged grounds existed to terminate Respondent-Mother's parental rights for neglect, willfully failing to pay a reasonable portion of the costs of care for the juvenile, and dependency, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(3), and (a)(6).

Following the grounds phase of the hearing, held on 25 January 2022 and 9 February 2022, the trial court entered an Order for Termination of Parental Rights Grounds Phase on 22 March 2022. This Order included the following Findings of Fact:

15. Pursuant to N.C.G.S. §7B-1111, the Union County Division of Social Services has proven by clear, cogent, and convincing evidence that grounds exist for the termination of parental rights of Mother based on but not limited to the following:

A. [Respondent-Mother] has neglected the juvenile, to wit:

1) [Respondent-Mother] has not engaged in services to address identified needs, to wit:

**a) Substance Abuse.**

i. Early on in the case, [Respondent-Mother] completed a Daymark Assessment and was attending Daymark for substance abuse treatment. However, she continued to test positive, this included drug screens on November 18, 2019, for methamphetamines and December 30, 2019, for amphetamines, benzodiazepine, and opiates.

ii. [Respondent-Mother] completed her Daymark Substance abuse program on May 19, 2020 but did not complete the majority of the drug screens requested of her by Daymark and completed no drug screens from February 2020 until May of 2020.

iii. [Respondent-Mother's] May 21, 2020, drug screen was negative, but it was not an observed drug screen.

iv. [Respondent-Mother] was arrested for Possession of Drug Paraphernalia on June 1, 2020.

v. On July 14, 2020, the court ordered [Respondent-Mother] to complete a hair follicle test within 48 hours. She did not complete the test.

vi. [Respondent-Mother] completed a court ordered hair follicle test on October 27, 2020, and tested positive for amphetamines and methamphetamines.

vii. On November 18, 2020, December 12, 2020, and January 28, 2021, [Respondent-Mother] completed drug screens and tested negative.

viii. [Respondent-Mother] failed to complete any other requested drug screens for DSS including those requested in March, April, May, or June of 2021.

ix. On June 29, 2021, the court again Ordered [Respondent-Mother] to complete an observed drug screen within 24 hours. She failed to complete the drug screen.

x. On June 1, 2020, and July 30, 2021, [Respondent-Mother] was arrested for possession of methamphetamines and possession of drug paraphernalia. She admits that on each occasion, the pipe that was in the car in which she was a passenger was used for methamphetamines. She denies that the pipe is her [sic]. She testified that the pipes belonged to the 2 separate individuals who she was with when she was arrested. This information is probative and relevant in that, during that period of time she was in the presence of methamphetamine use.

xi. Although [Respondent-Mother] completed her substance use treatment with Daymark in May of 2020, she has continued to be around illegal substances and test positive for illegal substances.

xii. On October 27, 2020, [Respondent-Mother] submitted to a hair follicle drug screen that was positive.

xiii. In October of 2021, [Respondent-Mother] reported to Daymark that she had used methamphetamines a few days before that. The test occurred contemporaneously with the filing of the TPR petition.

xiv. This case has been ongoing since 2019 with very little progress. [Respondent-Mother] has failed to maintain sobriety for any considerable period of time.

**b) Mental Health**

i. On January 11 & 12, 2021, [Respondent-Mother] had a parental capacity assessment done by Dr. George Popper.

ii. The recommendation from the assessment was that [Respondent-Mother] was to see treatment to address some mental health concerns such as adjustment disorder and antisocial personality disorder, as well as address her substance use issues.

i[ii]. [Respondent-Mother] has not engaged in any mental health treatment.

**c) Housing/Employment**

i. Throughout the life of this case, [Respondent-Mother] has lived with a friend . . . . She and the juvenile shared a room together in this home.

ii. [Respondent-Mother] reports that she cleans houses for a living. She has provided the Social Worker with handwritten notes of what dates she has worked and how much she has made on one occasion.

iii. [Respondent-Mother] agreed to search for employment which would allow her to financially care for the juvenile. In December of 2020, she did submit several applications and provided that information to DSS but has not provided any information since the[n].

2) Based on the historical facts of this case, there is a high probability of repeated neglect if the juvenile is returned to [Respondent-Mother].

3) [Respondent-Mother's] failure to comply with her Out of Home Services Agreement, her unwillingness to be forthcoming about her substance use, unwillingness to submit to drug test, and her unwillingness to seek treatment are all indicative of the probability of repeated neglect.

B. The juvenile has been placed in the custody of Union County Division of Social Services and in a foster home and [Respondent-Mother], for a continuous period of six months next preceding the filing of the motion, has willfully failed for such a period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so, to wit:

1) Since October of 2020, [Respondent-Mother] reported and testified that she was working either waiting tables or cleaning houses. She has failed to pay any amount of her income greater than \$0.00 for the use and benefit of the minor children.

2) [Respondent-Mother] does not have any physical or mental disabilities that would preclude her [from] paying child support in an amount greater than \$0.00 for the use and benefit of the minor child. She has failed to pay any amount greater than \$0.00 for the use and benefit of the minor child.

C. [Respondent-Mother] is incapable of providing 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 such incapability will continue for the foreseeable future, to wit:

- 1) [Respondent-Mother] does not have reasonable and appropriate alternative childcare arrangements for the juvenile.
- 2) [Respondent-Mother] does not have the ability to provide appropriately as she has failed to address substance abuse, and mental health.
- 3) She has failed to adequately engage in services to address her identified needs.
- 4) This matter has been subject to numerous delays. The delays made it possible for [Respondent-Mother] to address and solidify her substance abuse recovery. She has had ample time to address the issues that were raised in the original petition filed on October 18, 2019.

Based on these Findings, the trial court concluded grounds exist to terminate Respondent-Mother and Respondent-Father's parental rights in minor child. The trial court held the best interests phase of the hearing on 9 March 2022. Following this hearing, the trial court entered an Order to Terminate Parental Rights Best Interests Phase on 6 April 2022, concluding it was in the best interests of the minor child to terminate the parental rights of both Respondent-Mother and Respondent-Father.<sup>1</sup> On 20 April 2022, Respondent-Mother timely filed Notice of Appeal.

### **Issue**

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<sup>1</sup> Respondent-Father did not appeal this Order and is not a party to the proceedings on appeal.

The dispositive issue on appeal is whether the trial court properly determined grounds exist to terminate Respondent-Mother's parental rights in minor child pursuant to N.C. Gen. Stat. § 7B-1111.

**Analysis**

“At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground for termination exists.” *In re O.J.R.*, 239 N.C. App. 329, 332, 769 S.E.2d 631, 634 (2015) (citations omitted); *see also* N.C. Gen. Stat. § 7B-1109(f) (2021). Therefore, “[t]his Court reviews a trial court’s conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court’s findings of fact, and whether the findings of fact support the court’s conclusions of law.” *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015). “If the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citation and quotation marks omitted). “[T]he trial court’s findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court.” *Id.* at 532, 679 S.E.2d at 909. We review the trial court’s conclusions of law de novo. *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014).

I. **Challenged Findings of Fact**



Respondent-Mother challenges the following Findings as not supported by clear and convincing evidence:

x. On June 1, 2020, and July 30, 2021, [Respondent-Mother] was arrested for possession of methamphetamines and possession of drug paraphernalia. She admits that on each occasion, the pipe that was in the car in which she was a passenger was used for methamphetamines. She denies that the pipe is her [sic]. She testified that the pipes belonged to the 2 separate individuals who she was with when she was arrested. This information is probative and relevant in that, during that period of time she was in the presence of methamphetamine use.

....

xiii. In October of 2021, [Respondent-Mother] reported to Daymark that she had used methamphetamines a few days before that. The test occurred contemporaneously with the filing of the TPR petition.

....

iv. [Respondent-Mother] has not engaged in any mental health treatment.

As to Finding 15(A)(1)(a)(x), Respondent-Mother contends “[t]he finding that [Respondent-Mother] was arrested for possession of methamphetamines on 1 June 2020 is not supported by clear and convincing evidence, since the evidence showed on that date [Respondent-Mother] was only arrested for possession of drug paraphernalia.” The testimony presented at trial reflects Respondent-Mother was arrested on 1 June 2020 for possession of drug paraphernalia and on 30 July 2021 for possession of methamphetamine and possession of drug paraphernalia. Although the timing of Respondent-Mother’s arrests is not entirely clear from the wording of

Finding 15(A)(1)(a)(x), there was clear and convincing evidence presented at trial Respondent-Mother was arrested for both possession of drug paraphernalia and possession of methamphetamine, and there was clear and convincing evidence presented Respondent-Mother was arrested both on 1 June 2020 and 30 July 2021. As such, even if the wording of this Finding could have been more exact, the meaning is clear. *See, e.g., In re S.W.*, 175 N.C. App. 719, 723, 625 S.E.2d 594, 597 (2006) (“A review of the record reveals that there is competent evidence to support [the] findings of fact . . . if not in exact form, at least in substance.”); *Thompson v. Carolina Cabinet Co.*, 223 N.C. App. 352, 358, 734 S.E.2d 125, 128 (2012) (“While plaintiff may not have used the precise words of the findings in his testimony, the findings reasonably paraphrase plaintiff’s testimony or are inferences reasonably drawn from that testimony.”). As the trial court expressly stated in the Finding: “This information is probative and relevant in that, during that period of time she was in the presence of methamphetamine use.” Thus, the testimony presented at trial supports Finding 15(A)(1)(a)(x). *See In re S.C.R.*, 198 N.C. App. at 531, 679 S.E.2d at 909 (“If the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, *even though there may be evidence to the contrary.*” (emphasis added)).

As to Finding 15(A)(1)(a)(xiii), Respondent-Mother contends the “finding is inaccurate and misleading” because Respondent-Mother completed “an assessment, and not a ‘test.’” Further, Respondent-Mother notes the drug screen dated 25 October 2021 was negative. Finding 15(A)(1)(a)(xiii) provides: “In October of 2021,

[Respondent-Mother] reported to Daymark that she had used methamphetamines a few days before that. The test occurred contemporaneously with the filing of the TPR petition.” This Finding is supported by the testimony and the Daymark records presented at trial, which both indicate Respondent-Mother completed an assessment and drug test on 25 October 2021. As such, this Finding is supported by the evidence.

Lastly, Respondent-Mother contends, and DSS agrees, Finding 15(A)(1)(b)(iv) is not sufficiently supported by the evidence. However, as DSS contends, such error is harmless as the remaining Findings of Fact clearly and convincingly support the trial court’s Conclusion Respondent-Mother neglected the minor child and there was a high probability Respondent-Mother would do so in the future.

## II. Likelihood of Future Neglect

Next, Respondent-Mother contends the trial court erred in concluding grounds exist to terminate Respondent-Mother’s parental rights in minor child pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (a)(3), and (a)(6). We disagree.

Our Courts have consistently held, “a finding by the trial court that any one of the grounds for termination in N.C.G.S. § 7B-1111(a) exists is sufficient to support a termination order.” *In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311 (2019) (citing *In re C.M.S.*, 184 N.C. App. 488, 491, 646 S.E.2d 592, 594 (2007)). Parental rights may be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), if “[t]he parent has . . . neglected the juvenile” within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2021).

Generally, “[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 L.O.K., J.K.W., T.L.W., & T.L.W.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation and quotation marks omitted). However, when “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” *Id.* (citation and quotation marks omitted). “In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect.” *Id.* (citation and quotation marks omitted).

A trial court may terminate parental rights based on prior neglect only if “the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). In determining the likelihood of future neglect, our Supreme Court has noted: “Because it lacks a crystal ball, a trial court may consider many past and present factors to make this forward-looking determination.” *In re M.B.*, 382 N.C. 82, 86, 876 S.E.2d 260, 264-65 (2022) (citing *In re L.H.*, 378 N.C. 625, 636, 862 S.E.2d 623, 631 (“[W]hile any determination of likelihood of future neglect is inevitably predictive in nature, the trial court’s findings

were not based on pure speculation.”)). “For instance, a trial court ‘must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.’” *Id.* at 86, 876 S.E.2d at 265 (quoting *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425 (2019)). Likewise, “[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 and quotation marks omitted).

In the case *sub judice*, the trial court’s Findings indicate the trial court considered “evidence of any changed circumstances” between the time the minor child was adjudicated to be neglected in August 2020 and the time of the termination hearing. However, as the trial court expressly found, the evidence presented at trial unequivocally demonstrates: “This case has been ongoing since 2019 with very little progress. [Respondent-Mother] has failed to maintain sobriety for any considerable period of time.” In addressing the extent of Respondent-Mother’s progress, the trial court properly found Respondent-Mother’s: failure to comply with her Out-of-Home Services Agreement; continued use of and exposure to illegal substances; unwillingness to be forthcoming about her substance use; and unwillingness to submit to the majority of the required drug screens are indicative of the probability of repeated neglect. *See In re R.L.R.*, 381 N.C. 863, 877, 874 S.E.2d 579, 591 (2022) (the trial court did not err in terminating the respondent-mother’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) where the respondent-mother failed “to

show the sustained behavioral changes necessary to eliminate the substance abuse and parenting-related concerns that led to [the minor child]’s removal). Thus, the trial court’s Findings of Fact support its Conclusion there is a high probability of future neglect if the minor child is returned to Respondent-Mother. Therefore, the trial court did not err in concluding Respondent-Mother’s rights were subject to termination based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).<sup>2</sup> Consequently, we affirm the trial court’s Termination of Parental Rights Orders.

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court’s Orders terminating Respondent-Mother’s parental rights to the minor child.

AFFIRMED.

Judges CARPENTER and STADING concur.

Report per Rule 30(e).

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<sup>2</sup> Because we conclude this ground has ample support in the trial court’s Findings, we need not address Respondent-Mother’s arguments as to the remaining termination grounds found by the trial court under N.C. Gen. Stat. § 7B-1111(a)(3) and (a)(6).