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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-410

Filed 06 June 2023

Guilford County, Nos. 17 JT 197-98, 17 JT 272

IN THE MATTER OF: B.S.T., K.M.T., L.M.T.

Appeal by Respondent-Mother from order entered 11 February 2022 by Judge Marcus A. Shields in Guilford County District Court. Heard in the Court of Appeals 16 May 2023.

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

*North Carolina Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.*

*Robert W. Ewing for Respondent-Appellant Mother.*

COLLINS, Judge.

Respondent-Mother appeals the trial court's order terminating her parental rights to her minor children, Ben, Kathy, and Lori.<sup>1</sup> Mother argues that the trial court erroneously determined that grounds existed to terminate her rights under N.C.

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<sup>1</sup> Pseudonyms are used to protect the juveniles' identities. See N.C. R. App. P. 42. The children's stepbrothers are referred to by the pseudonyms "James" and "David."

Gen. Stat. § 7B-1111(a)(1), (2), and (6). After review, we conclude the trial court properly terminated Mother's parental rights and affirm the termination order.<sup>2</sup>

### **I. Background**

Petitioner Guilford County Department of Health and Human Services ("DHHS") received a report on 6 February 2017 alleging inappropriate discipline after Mother's stepson James was seen with a swollen eye during a FaceTime call. The family had recently moved to Guilford County from Pennsylvania, and the reporter expressed concerns about prior Child Protective Services ("CPS") involvement with the family, Mother's history of hitting her children, and the family's unsanitary living conditions while in Pennsylvania. A DHHS social worker conducted an unannounced home visit the same day; Mother and the children denied any abuse had occurred. Mother stated that her children had had behavior problems at their schools in Pennsylvania and had made claims of abuse against her that were determined to be unfounded. Mother attributed James' eye injury to his habit of picking at the eye. However, James was not present when the visit occurred. The social worker completed a safety plan with Mother whereby the children would be enrolled in school within one week, and the family would agree to services.

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<sup>2</sup> The trial court also terminated the parental rights of Kathy and Lori's father ("the father"), but he did not appeal. Ben's father was unknown, and his parental rights were terminated by the court as well.

*Opinion of the Court*

The social worker returned the next day. James and the father were present, and they also attributed James' eye injury to his habit of picking at it. The father vouched for Mother's statements regarding the children's behavior problems. James denied Mother "was mean to him" or his brother David, who was also Mother's stepson. The social worker observed a small bump on James' eye and a small, dime-sized mark on his cheek, and she advised the parents to take James in for a medical evaluation.

On 14 February 2017, DHHS received a report from James' new school that he had presented with a large mark on his face near his eye. Two days later, the DHHS social worker visited the family. As reported, James had a "large pink mark on his face stretching from his eye to [his] cheek." James explained that the mark appeared after Mother put a hot rag on his face because his eye was hurting. Mother stated that the rag was microwaved for one minute before it was applied to James' face. She described it as "hot, but not that hot to her touch" but "when the rag was taken off his face, she noticed his skin peeled and that it had burnt his face." The social worker requested that the parents take James to the emergency room to have the injury assessed. The emergency room doctor did not note any concerns about the injury.

On 22 February 2017, the DHHS social worker visited the children's school. The school reported that James and David "always appear to be hungry," but when they were interviewed, both boys stated that they ate at home and were able to report what they had eaten the previous day. James and David confirmed that the rag that

was placed on James' face was microwaved "for about 1 minute," and James stated he did not tell Mother it was hot, though he was "kicking and yelling."

Shortly thereafter, DHHS received the family's Pennsylvania CPS history. The files included five separate reported instances of potential abuse against either James or David. The social worker visited the family and completed a new safety assessment regarding discipline, and the parents agreed to not physically discipline the children during the DHHS investigation. DHHS also referred James and David for Child Medical Examinations ("CMEs").

The CMEs were conducted on 20 March 2017. During their interviews, James and David reported being locked in their bedrooms as punishment, which forced them to urinate and defecate in the rooms. Both children also stated they were "scared about something," but they did not elaborate further. James and David both had marks and scars on multiple areas of their bodies, some from possible cigarette burns. In the medical staff's opinion, the marks and scars were "non-accidental." The medical staff additionally reviewed the records from James' visit to the emergency room and stated their opinion that James' burn was also non-accidental because "the rag had to be hot enough to cause injury and . . . [Mother] had to have some kind of object to prevent herself from getting burned."

The next day, DHHS filed juvenile petitions alleging that Ben and Kathy were neglected and James and David were abused and neglected. DHHS was awarded nonsecure custody, and it placed the children in foster care.

Lori was born in July 2017. The parents did not inform DHHS of the pregnancy, and Mother did not receive prenatal medical care. One week after Lori's birth, DHHS filed a juvenile petition alleging Lori was neglected and dependent. In support of these allegations, DHHS stated that it had received an emergency report alleging that Lori was living in an injurious environment. DHHS also noted that Kathy, Ben, James, and David were already in DHHS custody and recounted the allegations that led to the assumption of their custody. Based on the petition allegations, DHHS was awarded nonsecure custody of Lori as well.

The petitions for all five children were heard on 18 August 2017. One month later, the trial court entered orders concluding that Ben and Kathy were neglected and dependent, Lori was neglected, and James and David were abused, neglected, and dependent.

The trial court conducted a dispositional hearing over two days in September and October 2017. On 3 November 2017, the trial court entered its disposition order. Mother was ordered to comply with her case plan, which required her to (1) maintain suitable housing, cooperate with announced and unannounced home visits, keep utilities current, and contact DHHS within 48 hours of any changes to her living situation; (2) participate in a parenting/psychological evaluation and follow any resulting recommendations, successfully complete the Parent Assessment Training and Education (PATE) program, cooperate with child support enforcement, and attend appointments with the children when deemed appropriate; (3) provide DHHS

with verification of her income and keep DHHS updated on her employment status; and (4) submit to a substance abuse assessment and follow through with any resulting recommendations. The trial court also required Mother to “enter individual therapy and complete a psychological evaluation, whereby the evaluator is presented with the Child Protective Services (CPS) history from Pennsylvania as well as a copy of the Petition prior to the evaluation occurring.” The court concluded that “[i]t is in the best interest of the juveniles that the goal is reunification.” The children remained in DHHS custody, and Mother was denied any visitation with Ben, Kathy, or Lori.

After a series of continuances, the trial court conducted a permanency planning hearing in March 2019. In its 21 May 2019 order resulting from that hearing, the trial court made the following findings about Mother’s progress on her case plan: the parents moved out of their apartment and were living in a hotel, Mother had completed a parenting evaluation and the PATE program, Mother was in arrears of \$250 for child support, Mother worked in event planning and was paid under the table, and Mother had tested negative for illegal substances on her only test. The court set a permanent plan of adoption with a concurrent plan of reunification. Visitation between Mother and her children remained suspended, and the attorney advocate for the guardian ad litem (“GAL”) was directed to file a termination of parental rights petition within 60 days.

The trial court held the next permanency planning hearing on 11 October 2019. In its 11 December 2019 order resulting from the hearing, the court again addressed Mother's progress on her case plan, finding that the parents still lived in a hotel, Mother was regularly attending mental health counseling, Mother still had \$250 in child support arrears, Mother claimed to be working at Outback Steakhouse but had not provided verification, and Mother had completed her substance abuse assessment, and it was suggested that she limit her use of alcohol. The trial court maintained adoption as the primary plan with a concurrent plan of reunification. Mother's visitation with her children remained suspended, and the GAL was ordered to file a termination petition "by the end of next week."

The GAL filed a petition to terminate Mother's parental rights to her children Ben, Kathy, and Lori on 15 November 2019<sup>3</sup> and filed an amended petition three days later. The GAL alleged that Mother's rights could be terminated based on four grounds: neglect, willful failure to make reasonable progress, dependency, and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6), and (7) (2021).

The trial court conducted another permanency planning hearing on 29 January 2021. In its 29 March 2021 order resulting from the hearing, the trial court made the following findings concerning Mother's progress on her case plan: Mother and the father still lived in the same hotel, she was working at TGI Friday's as of 17 June

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<sup>3</sup> The GAL initially filed a termination petition on 1 November 2019, but voluntarily dismissed that petition.

2020, she was no longer in mental health therapy because she lacked insurance, she had a child support arrearage of \$552.48, and she had missed several requested drug screens. The permanent plans and suspended visitation remained unchanged.

The termination petition was heard on 21-22 September 2021. Early in the hearing, the GAL voluntarily dismissed its claim that Mother's parental rights could be terminated based on willful abandonment but proceeded on the remaining grounds. DHHS Social Worker Kimberly Young testified extensively about the history of the case, including Mother's progress on her case plan. Young testified that, as of the date of the hearing, Mother had not secured adequate housing, was not engaged in mental health services, had failed to submit to requested drug screens, and had failed to provide evidence of her employment. As a result, Mother was not currently in compliance with her case plan.

On 11 February 2022, the trial court entered an order terminating Mother's parental rights to Ben, Kathy, and Lori, concluding that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6). The trial court further concluded that termination was in the best interests of all three children. Mother appealed.<sup>4</sup>

## **II. Grounds for Termination**

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<sup>4</sup> The trial court's order also terminated the father's parental rights to James and David. Although respondent initially appealed from the portion of the termination order that applied to James and David, she later withdrew that part of her appeal.



Mother contends that the trial court erred by adjudicating grounds for terminating her parental rights.

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) (quotation marks, brackets, and citations omitted).

We first examine the trial court's determination that Mother's rights were subject to termination based on neglect. A parent's rights may be terminated if that parent neglects their child such that the child meets the statutory definition of a "neglected juvenile." N.C. Gen. Stat. § 7B-1111(a)(1). A juvenile is defined as "neglected" when their 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) (2021).

When a child has been out of their parent's custody for a significant time period, "neglect may be established by a showing that the child was neglected on a previous occasion and the presence of the likelihood of future neglect by the parent if the child were to be returned to the parent's care." *In re J.D.O.*, 381 N.C. 799, 810, 874 S.E.2d 507, 517 (2022) (citation omitted). "When determining whether such 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 R.L.D.*, 375 N.C. 838, 841, 851 S.E.2d 17, 20 (2020) (citation omitted). “The determinative factors must be the best interests of the child and the fitness of the parent to care for the child at the time of the termination proceeding.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (emphasis 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).

In this case, there is no dispute that Ben, Kathy, and Lori were previously adjudicated on 18 September 2017 to be neglected juveniles. Mother thus focuses her challenge to the neglect ground on the trial court’s determination that there was a likelihood of future neglect if Ben, Kathy, and Lori were returned to her care.

According to the trial court’s unchallenged findings of fact, Mother’s case plan required her to: (1) maintain “appropriate independent housing” suitable for the children; (2) improve her parenting skills, including by completing the PATE parenting classes and by participating in individual therapy; (3) keep DHHS updated on her employment status; and (4) address issues with substance abuse.

Mother focuses on one of these requirements, arguing that her “participation in her therapy corrected the conditions which led to the children’s removal from their home,” such that the trial court erred by finding a likelihood of repetition of neglect. Mother emphasizes that there was evidence presented at the termination hearing

that showed she had attended numerous individual therapy sessions at The Social and Emotional Learning Group (“The S.E.L. Group”), that during that therapy she learned new parenting strategies as alternatives to physical discipline, and that her provider at The S.E.L. Group recommended that Mother begin visiting with the children to begin the reunification process.

However, the cited treatment and the resulting recommendations from The S.E.L. Group were from 2018, approximately three years before the termination hearing. Mother’s therapy at The S.E.L. Group has little relevance to a determination of whether she had completed the individual therapy component of her case plan by the time of the termination hearing. Mother does not challenge the trial court’s finding that she informed DHHS “that her last session with The S.E.L. Group was on October 19, 2019,”<sup>5</sup> which was more than two years before the termination hearing.

The trial court’s findings reflect that Mother did not participate in any additional therapy after she left The S.E.L. Group in 2019 and that she was not participating in individual therapy at the time of the termination hearing in November 2021. The trial court made unchallenged findings that Mother was not presently “engaged in any individual therapy,” nor “presently engaged in any therapy

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<sup>5</sup> The court also made an unchallenged finding that DHHS was unable to confirm that the 19 October 2019 appointment occurred. Mother’s last confirmed therapy session at The S.E.L. Group was 23 August 2018.

or individual therapy to address the issues related to inappropriate discipline and the conditions which caused the juveniles to come into care of GCDHHS so [she] can provide adequate care and supervision[.]” As a result, the trial court found Mother was “not in compliance with this component of [her] case plan.”

Even if the evidence regarding Mother’s therapy at The S.E.L. Group was relevant, the trial court’s findings also show that DHHS was unable to confirm that the therapy adequately addressed the issues which led to the children’s removal. For instance, in finding of fact 60m, which Mother challenges, the court notes the limited information presented about Mother’s therapy:

m. Presently and in the past [the father and Mother] were provided with information regarding FSOP,<sup>6</sup> they refused to participate with FSOP based upon insurance issues and the cost of the deductible. They began working with The S.E.L. Group for therapy, engaged in some individual and group sessions, however based on the information presented to the Court there has not been sufficient information to show [the father and Mother] have addressed through therapy, that they successfully attended and addressed the issues which caused the juveniles to come into GCDHHS’ custody and care with respect to inappropriate discipline and proper parenting as well as addressing the issues on how to parent the juveniles who have behavioral issues that could specifically be related to potential autistic diagnoses for any juveniles. Neither [the father] nor [Mother] successfully completed the recommended therapy services component of their case plan.

Mother contends that the portion of this sub-finding which states “that there

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<sup>6</sup> “FSOP” is an acronym for Family Services of the Piedmont.

was insufficient information to show that [she] has addressed the issues which led to her children's removal from the home through her therapy with [T]he S.E.L. group was not supported by competent evidence." She directs attention to three documents from The S.E.L. Group that Mother claims demonstrate her progress in therapy: two clinical summaries, dated 10 May 2018 and 19 February 2019, and a 30 August 2018 letter from Dr. Nannette S. Funderburk.

However, Mother does not challenge the trial court's finding of fact 44, which acknowledges these letters but also provides more context around DHHS' inability to learn about Mother's therapy and whether The S.E.L. Group was aware of the issues that led to the children's removal from Mother's home:

44. GCDHHS was never able to confirm with . . . [Mother's] therapist that [her] individual therapy sessions as well as [the father and Mother's] couple sessions were addressing the severe inappropriate discipline and physical abuse [the father] and [Mother] inflicted upon the juveniles. GCDHHS was never able to determine, based on the letters received from The S.E.L. Group that The S.E.L. Group understood that the underlying Court expected . . . [Mother's] therapeutic goals to address the inappropriate discipline, physical abuse, and domestic violence issues. Based on the letters GCDHHS did receive from The S.E.L. Group GCDHHS determined that the issues which led to the juveniles' removal were not being properly addressed.

This unchallenged finding, which is binding on appeal, is sufficient to support the trial court's finding in challenged sub-finding 60m that there was insufficient information to show Mother addressed the issues which led to the children's removal through her individual therapy at The S.E.L. Group. Considering this lack of

information, together with the at least two-year period leading up to the termination hearing where Mother did not participate in any individual therapy, the trial court did not err by determining that Mother had failed to comply with this component of her case plan.

In addition to the preceding findings discussing Mother's lack of progress in individual therapy, the trial court also made several other unchallenged findings regarding Mother's lack of progress in other areas of her case plan: (1) Mother was "living in a hotel" which "[was] not appropriate for these juveniles"; (2) Mother had only completed Phase I of the PATE program and had not made sufficient progress to resume visitation with the children so that she could move forward with Phase II; (3) Mother never maintained stable employment and never consistently provided DHHS with paystubs to verify her employment; and (4) Mother failed to submit to requested drug screens throughout 2021.

Thus, the trial court's findings show that, at the time of the termination hearing, Mother had not participated in individual therapy for at least two years and it did not appear that the therapy she had previously participated in addressed the issues that led to the children's removal; Mother lived in inadequate housing; Mother failed to complete all phases of the PATE program; Mother failed to obtain stable employment; and Mother failed to comply with the drug screens requested by DHHS. Despite her children being in DHHS custody for more than four years, Mother made only minimal progress on her case plan. Accordingly, the trial court did not err by

finding that there was a likelihood of future neglect if the children were returned to Mother's care.

Based on the foregoing, the trial court correctly determined Mother's parental rights could be terminated based on neglect. Since "[i]t is well settled that a finding of only one ground is necessary to support a termination of parental rights," we do not consider Mother's challenges to the remaining grounds for termination adjudicated by the trial court. *In re I.P.*, 379 N.C. 228, 232, 864 S.E.2d 337, 340 (2021) (quotation marks and citation omitted).

### **III. Conclusion**

The trial court's findings of fact supported its decision to terminate Mother's parental rights based on neglect. Mother does not challenge the court's conclusion that termination of her rights was in her children's best interests. *See* N.C. Gen. Stat. § 7B-1110 (2021). Accordingly, we affirm the termination order.

AFFIRMED.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).