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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-89

Filed 01 August 2023

Cabarrus County, Nos. 21 JT 64-66

In re: A.M.H., M.P.H., Jr., K.D.H.

Appeal by Respondent-Father from orders entered 2 November 2022 by Judge Michael G. Knox in Cabarrus County District Court. Heard in the Court of Appeals 19 July 2023.

Jeffrey L. Miller for Respondent-Appellant Father.

Hartsell & Williams, P.A., by E. Garrison White, for Appellee Cabarrus County Department of Human Services.

Fox Rothschild LLP, by Brian C. Bernhardt, for Guardian ad Litem.

COLLINS, Judge.

Respondent-Father appeals the trial court's orders terminating his parental rights to his three children. We affirm.

I. Background

Father is the biological father of minor children Ann, Matt, and Ken.¹ Father was imprisoned on 18 February 2021 on criminal charges alleging statutory rape, indecent liberties, and five counts of child abuse. Father was ordered to have no contact with the children. On 22 April 2021, Cabarrus County Department of Human Services (“DHS”) filed petitions alleging that Ann was abused, neglected, and dependent, and that Matt and Ken were neglected and dependent. Nonsecure custody orders were entered on the same date granting DHS temporary custody.

The Petitions alleged, among other things, that Father sexually abused Ann; sold food stamps for drugs instead of feeding the children; engaged in drug use several times per week and was under the influence in front of the children; hit the children on their arms and legs; and had tested positive for methamphetamines, amphetamines, hydrocodone, and oxycodone. The Petitions further alleged that his home, where the children lived, lacked electricity, was cluttered to the extent it was “hoarder-ish,” and was infested with roaches.

After a hearing on 17 June 2021, the trial court adjudicated Ann abused, neglected, and dependent, and adjudicated Matt and Ken neglected and dependent. Custody remained with DHS and reunification was established as the primary permanent plan, with guardianship as the secondary plan. An extensive case plan was decreed for Father concerning evaluations, assessments, a parenting course,

¹ We use pseudonyms to protect the identities of the minor children. *See* N.C. R. App. P. 42.

drug screens, housing, employment and support, visitation once the no-contact order was lifted, release of information, contact with DHS, and transportation for services.

Each of the subsequent Review and Permanency Planning Orders found that Father had not made progress on his case plan and that the children could not be safely returned to Father's care. In February 2022, the primary plan for Ann was changed to adoption with reunification as her secondary plan. In May 2022, the trial court changed Matt and Ken's primary plan to adoption with reunification as the secondary plan.

On 14 June 2022, DHS filed Verified Motions in the Cause to Terminate Parental Rights ("TPR Motions") as to each of the children. The TPR Motions alleged: (i) safety concerns, including substance abuse, domestic violence, lack of parenting skills, failure to address mental health/psychological needs, lack of stable housing, failure to properly manage medication, failure to protect the children, and sexual abuse; (ii) that Father had not made reasonable and adequate efforts towards his case plan to ensure the safety of the children; and (iii) that Father had not sent the children letters, pictures, gifts, or money during the thirteen months they were in DHS custody and instead Father withheld love and support from the children.

After a hearing, the trial court terminated Father's parental rights to each child. In the orders entered on 2 November 2022 (the "TPR Orders"), the trial court found and concluded that the following grounds existed to terminate Father's parental rights to Ann: (i) abuse and neglect under N.C. Gen. Stat. § 7B-1111(a)(1);

(ii) willful unsatisfactory progress to reunify with the child under N.C. Gen. Stat. § 7B-1111(a)(2); (iii) dependency under N.C. Gen. Stat. § 7B-1111(a)(6); and (iv) willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7). The trial court found and concluded that the following grounds existed to terminate Father's parental rights to Matt and Ken: (i) neglect under N.C. Gen. Stat. § 7B-1111(a)(1); (ii) willful unsatisfactory progress to reunify with the child under N.C. Gen. Stat. § 7B-1111(a)(2); (iii) willful failure to pay a reasonable portion of costs of care under N.C. Gen. Stat. § 7B-1111(a)(3); and (iv) dependency under N.C. Gen. Stat. § 7B-1111(a)(6). The trial court further found and concluded that it was in each child's best interests to terminate Father's parental rights.

Father timely filed his notice of appeal from the TPR Orders.

II. Discussion

Father argues that the trial court erred by terminating his parental rights. Father specifically argues that "there was insufficient clear and convincing evidence to support the trial court's pertinent findings of fact, and the findings of fact were insufficient to support the court's conclusions of law for an adjudication . . . of the grounds for termination of Father's parental rights" and that the trial court "us[ed] his pretrial incarceration and compliance with a no contact [o]rder as a sword in its determination of grounds for termination of parental rights."

In a termination of parental rights proceeding, the trial court must adjudicate the existence of any of the grounds for termination alleged in the petition. At the

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adjudication hearing, the trial court must “take evidence [and] find the facts” necessary to support its determination of whether the alleged grounds for termination exist. N.C. Gen. Stat. § 7B-1109(e) (2022). “At the adjudicatory stage, the petitioner bears the burden of proving by ‘clear, cogent, and convincing evidence’ the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes.” *In re A.U.D.*, 373 N.C. 3, 5-6, 832 S.E.2d 698, 700 (2019) (citing N.C. Gen. Stat. § 7B-1109(f)).

When reviewing the trial court’s adjudication of grounds for termination, we examine whether the trial court’s findings of fact “are supported by clear, cogent and convincing evidence and [whether] the findings support the conclusions of law.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (quotation marks and citation omitted). Any unchallenged findings “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) (citations omitted). The trial court’s conclusions of law are reviewed de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

The trial court found neglect under N.C. Gen. Stat. § 7B-1111(a)(1) as a ground to terminate Father’s rights to all three children. This subsection allows for parental rights to be terminated if the trial court finds that the parent has neglected their child to such an extent that the child fits the statutory definition of a “neglected juvenile.” N.C. Gen. Stat. § 7B-1111(a)(1) (2022). A neglected juvenile is defined, in relevant part, as a juvenile “whose parent . . . [d]oes not provide proper care,

supervision, or discipline” or “whose parent . . . [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) (2022).

“[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.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

Termination of parental rights based upon this statutory ground 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 a likelihood of future neglect by the parent. When determining whether such future neglect is likely, the district 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) (ellipses, quotation marks, and citations omitted).

In its termination order, the trial court made the following relevant findings of fact pertinent to Ann:

4. [Mother] is the natural mother of the juvenile. [Mother] was previously incarcerated at Anson Correctional Institute, 552 Prison Camp Road, Polkton, NC 28135. She is currently on parole through Buncombe County and her whereabouts are unknown.

5. [Father] is the biological father of the juvenile. [Father] is currently incarcerated at the Cabarrus Count[y] Jail, 25 Corban Ave SE, Concord, NC 28025. Paternity is not at

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issue.

....

12. The safety concerns regarding [Ann] include but are not limited to, substance abuse, domestic violence, lack of parenting skills, failure to address mental health/psychological needs, lack of stable housing, failure to properly manage medication, failure to protect the juvenile, and sexual abuse.

13. On or about June 17, 2021, after a hearing was conducted and evidence was presented the Court found by clear, cogent, and convincing evidence that the juvenile was abused, neglected and dependent. Based upon the facts presented and the information provided in the disposition report, a case plan was established for [Mother] and [Father] to address the issues which led to the removal of the juvenile and her siblings from the home.

14. Since this finding, the Court has consistently reviewed parent's progress towards the case plan and the parents' efforts to alleviate or remedy the issues which led to the removal of the juvenile from the home. [Mother] and [Father] have not made reasonable and adequate efforts towards the case plan to ensure the safety of the child. There is a high probability of repetition of neglect and dependency of the child if the child was returned to [Mother's] and [Father's] custody based upon the lack of commitment towards working on the case plan. The concerns at the time of removal are still a concern, and there have not been any sustained behavior changes shown by [Mother] and [Father].

....

19. [Father] has been incarcerated in Cabarrus County Jail since April 14, 2021. He has not started any services from his case plan. [Father] is charged with five counts of misdemeanor child abuse, one count of felony statutory rape of a child by an adult, and one count of felony indecent liberties with a child, involving [Ann] and her siblings.

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There is currently a no contact order in place preventing any contact by [Father] with the children. [Father] has not seen [Ann] while she has been in CCDHS custody. [Father] has not sent [Ann] an[y] letters, pictures, gifts, or money. He has withheld love and support from [Ann].

. . . .

21. [Mother] and [Father] have not made adequate progress under the plan within a reasonable period of time. [Mother] and [Father] have not actively participated in or cooperated with the plan, CCDHS and the GAL. [Mother] and [Father] have not remained available to the court, CCDHS and the GAL. [Mother] and [Father] have not acted in a manner that is consistent with the juvenile's health and safety.

22. [Mother] and [Father] have never taken part in the juvenile's life or acted consistent with their constitutional protected status as a parent. . . .

23. [Mother] and [Father] have not remedied any of the conditions that led to [Ann's] removal. [Mother] and [Father] ha[ve] not shown any behavior changes, or the ability to care for [Ann's] health, safety, and welfare. [Mother] and [Father] ha[ve] not acted in a manner that is consistent with the juvenile's health and safety and ha[ve] not shown the ability to care for the juvenile's health and safety.

. . . .

25. There is a high probability of repetition of neglect and dependency of the juvenile, if the juvenile were returned to the mother's and father's custody based upon their lack of commitment towards working on the case plan and that is likely any incapability will continue for the foreseeable future. The concerns at the time of removal are still a concern. The mother and father failed to provide the personal contact, love, and affection that exists in the parental relationship.

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The trial court made similar relevant findings of fact pertinent to Matt and

Ken:

5. [Father] is the biological father of the juvenile[s]. [Father] is currently incarcerated at the Cabarrus County Jail, 25 Corban Ave SE, Concord, NC 28025. Paternity is not at issue.

. . . .

12. The safety concerns regarding [Ken] include but are not limited to, substance abuse, domestic violence, lack of parenting skills, failure to address mental health/psychological needs, lack of stable housing, failure to properly manage medication, failure to protect the juvenile, and sexual abuse.

13. The safety concerns regarding [Matt] include but are not limited to, substance abuse, domestic violence, lack of parenting skills, failure to address mental health/psychological needs, lack of stable housing, failure to properly manage medication, failure to protect the juvenile, and sexual abuse.

14. On or about June 17, 2021, after a hearing was conducted and evidence was presented the Court found by clear, cogent, and convincing evidence that the juvenile[s] [were] . . . neglected and dependent. Based upon the facts presented and the information provided in the disposition report, a case plan was established for [Mother] and [Father] to address the issues which led to the removal of the juvenile[s] . . . from the home.

15. Since this finding, the Court has consistently reviewed parent[s'] progress towards the case plan and the parents' efforts to alleviate or remedy the issues which led to the removal of the juvenile[s] from the home. [Mother] and [Father] have not made reasonable and adequate efforts towards the case plan to ensure the safety of the child[ren]. There is a high probability of repetition of neglect and dependency of the child[ren] if the child[ren were] returned

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to [Mother] and [Father's] custody based upon the lack of commitment towards working on the case plan. The concerns at the time of removal are still a concern, and there have not been any sustained behavior changes shown by [Mother] and [Father].

. . . .

29. [Father] has been incarcerated in Cabarrus County Jail since April 14, 2021. He has not started any services from his case plan. [Father] is charged with five counts of misdemeanor child abuse, one count of felony statutory rape of a child by an adult, and one count of felony indecent-liberties with a child, involving [Ann] and her siblings. There is currently a no contact order in place preventing any contact by [Father] with the children. . . .

. . . .

32. [Mother] and [Father] have not made adequate progress under the plan within a reasonable period of time. [Mother] and [Father] have not actively participated in or cooperated with the plan, CCDHS and the GAL. [Mother] and [Father] have not remained available to the court, CCDHS and the GAL. [Mother] and [Father] have not acted in a manner that is consistent with the juvenile[s'] health and safety.

33. [Mother] and [Father] have never taken part in the juvenile[s'] li[ves] or acted consistent with their constitutional protected status as a parent. . . .

34. [Mother] and [Father] have not remedied any of the conditions that led to [Ann's] removal. [Mother] and [Father] ha[ve] not shown any behavior changes, or the ability to care for [Ann's] health, safety, and welfare. [Mother] and [Father] ha[ve] not acted in a manner that is consistent with the juvenile's health and safety and has not shown the ability to care for the juvenile's health and

safety.²

35. [Mother] and [Father] have not acted consistent with their constitutional protected status as a parent. . . .

36. There is a high probability of repetition of neglect and dependency of the juvenile[s], if the juvenile[s] were returned to the mother's and father's custody based upon their lack of commitment towards working on the case plan and that is likely any incapability will continue for the foreseeable future. The concerns at the time of removal are still a concern. The mother and father failed to provide the personal contact, love, and affection that exists in the parental relationship.

Based upon these findings, the trial court concluded that grounds exist to terminate Father's parental rights to the children based on neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Here, there is clear, cogent, and convincing evidence of past neglect. The underlying Adjudication/Disposition Order adjudicated Matt and Ken neglected and dependent, and Ann abused, neglected, and dependent. In that order, the trial court based its adjudications of neglect upon findings, supported by clear and convincing evidence, of Father's physical abuse of the children; Father's drug use; Father's failure to provide the children with necessary health, medical, welfare, psychological, and housing needs; and multiple allegations of Father's sexual abuse of Ann.

There is also clear, cogent, and convincing evidence of a high probability of a repetition of neglect as Father remained incarcerated on charges of statutory rape

² This finding contains a typographical error in referring to Ann instead of Matt and Ken.

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and taking indecent liberties with Ann and five counts of child abuse of the children, failed to make any progress in his case plan, and failed to address the issues that led to the children's removal. Ms. Capitan, a case worker with DHS, testified that Father failed to complete his parenting assessment and classes, sex offender assessment and classes, individual therapy, domestic violence assessment and classes, and substance abuse assessment and classes. She further testified that Father had not made any significant behavior changes, had not made any efforts to regain custody of the children, and had not taken responsibility for the children coming into DHS custody.

Father argues that he was falsely accused of the criminal charges. However, Father invoked the Fifth Amendment at the TPR hearing when asked whether he had vaginal intercourse with Ann and when asked whether he, with immoral, improper, and indecent liberties, touched Ann. Because Father invoked the Fifth Amendment instead of denying these allegations, the factfinder may "infer that his truthful testimony would have been unfavorable to him." *In re L.C.*, 253 N.C. App. 67, 73, 800 S.E.2d 82, 87 (2017) (citation omitted).

Father also asserts that his incarceration was an impediment to his receiving services and working on his case plan. Yet Father also testified that he was not certain when his criminal charges would be disposed of, had no idea when he would go on trial, and had not filed a speedy trial motion. He took no action to get a trial, resolve his criminal charges, or otherwise change his circumstances such that he could actively participate in his case plan. Similarly, Father claimed that he was

falsely accused of the criminal charges. In sum, Father's claims are contradicted by his actions and by his inaction, and while his incarceration alone cannot be a sword in the termination of parental rights proceedings, neither can it be a shield. *In re K.N.*, 373 N.C. 274, 282, 837 S.E.2d 861, 867 (2020).

The trial court properly found that the children were neglected and grounds existed to terminate Father's parental rights to them under N.C. Gen. Stat. § 7B-1111(a)(1). "Because a finding of only one ground is necessary to support a termination of parental rights," we need not address Father's arguments regarding the remaining grounds. *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019) (citation omitted).

III. Conclusion

There was clear, cogent, and convincing evidence to support the trial court's findings of fact, and the findings of fact supported the trial court's conclusions of law to terminate Father's parental rights to his children based on neglect. Accordingly, the trial court's TPR Orders are affirmed.

AFFIRMED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).