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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-991

Filed 01 August 2023

New Hanover County, No. 20 JT 192

IN THE MATTER OF: D.W., Jr.

Appeal by respondent-parents from order entered 25 July 2022 by Judge J. H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 19 July 2023.

Garron T. Michael for petitioner-appellee New Hanover DSS.

Robert W. Ewing for respondent-appellant mother.

Peter M. Wood for respondent-appellant father.

Adam C. Setzer for Guardian ad Litem.

DILLON, Judge.

Respondents (individually, “Mother” and “Father,” collectively “Parents”) are the natural parents of minor child D.W. (“David”).¹ Parents ask that the 25 July 2022 order terminating their parental rights to David on grounds of neglect and

¹ Pseudonym is used to protect the identity of the Juvenile and for ease of reading.

failure to make reasonable progress be reversed. After careful consideration, we affirm.

I. Background

On 2 October 2020, Mother gave birth to David. The New Hanover County Department of Social Services (“DSS”) first became involved in the matter after a report was made that David and Mother were both positive for phencyclidine (“PCP”) at the time of his birth. Father also tested positive for PCP. Although Parents denied any substance abuse problems, hospital testing revealed that David’s meconium was positive for PCP, THC, and cocaine.

Despite the DSS social worker’s significant work with Parents, on 9 October 2020, David was adjudicated a neglected and dependent juvenile and nonsecure custody of David was granted to DSS.

In November 2020, Mother began to participate in the Intensive Reunification Program to establish reunification with David. Her Comprehensive Clinical Assessment (“CCA”) diagnosed Mother with post-traumatic stress disorder, major depressive disorder, moderate alcohol use disorder, moderate PCP use disorder, and moderate cannabis use in early remission. Mother admitted she was using controlled substances and was recommended to participate in the Substance Abuse Intensive Outpatient Program (“SAIOP”), psychological services, and medication management.

On 10 December 2020, the trial court held a dispositional hearing where Mother stipulated that David was a neglected juvenile. It ordered that David remain

in DSS custody and Mother comply with: (1) her CCA, (2) Methodist Home In-Home Services, (3) the Intensive Reunification Program's therapist, (4) the Family Support Network's parent coach, (5) random hair and urine screens, and (6) sign a release of information for all service providers while (7) maintaining sufficient and stable housing and income to provide a safe environment for David.

The trial court held an initial review hearing two months later, on 18 February 2021, and ordered that David remain in DSS custody and Mother continue to comply with her case plan. After testing positive for PCP and cocaine, it noted that Mother would be discharged from the Intensive Reunification program if she did not improve her participation.

The trial court held a permanency planning hearing on 20 May 2021 and found that Mother was discharged from the Intensive Reunification Program on 11 March 2021 due to continuing her usage of illegal substances and failing to complete drug screens. It established that David's permanent plan be reunification with a concurrent plan of adoption because Mother expressed a renewed commitment to work on her reunification plan.

A second permanency planning hearing was held on 19 August 2021 and the trial court found that since Mother was struggling with her health, she had to cancel a few visits with David, had missed appointments, made minimal progress on her case plan, and continued to have positive drug screens. It therefore ordered that David's permanent plan be adoption with a concurrent plan of reunification.

On 22 October 2021, DSS moved to terminate Parents' parental rights on the basis of neglect and failure to make reasonable progress on her case plan.

A subsequent permanency planning hearing was held on 10 November 2021, where the trial court found that despite visiting David fairly consistently, Mother had not completed her case plan, was in denial about her addiction, did not engage in therapy, and tested positive for alcohol and controlled substances. It continued adoption as David's primary permanent plan.

A hearing for the termination of parental rights petition commenced on 14 March 2022. At the hearing the social worker testified that Mother: (1) had not completed her SAIOP program due to inconsistent attendance, (2) had not maintained sobriety for a 45-day period, and (3) likely has mental health issues because she did not believe her drug screens were correct.

On 25 July 2022, the trial court entered an order terminating Parents' parental rights on the basis of neglect and willful failure to make reasonable progress. Parents timely appealed.

II. Analysis

On appeal, Father filed a no-merit brief. We have reviewed the record and conclude there is nothing in the record to support any argument for relief. We therefore affirm Father's termination.

Mother essentially argues that the two grounds in support of the trial court's petition to terminate her parental rights to David (neglect and willful failure to make

reasonable progress) were not supported by clear, cogent, and convincing evidence during the adjudicatory stage. Because the neglect ground alone is sufficient to support the termination of Mother’s parental rights, we address only this ground.

A. Standard of Review

The Juvenile Code “provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020). “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). 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).

B. Grounds of Neglect

Mother argues that the judgment terminating her parental rights be reversed because the evidence failed to establish that Mother neglected David. We disagree for the following reasons.

A neglected juvenile is one “whose parent . . . does not provide proper care, supervision, or discipline.” N.C. Gen. Stat. § 7B-101(15) (2021). “[I]n the absence of current neglect, the trial court may adjudicate neglect as a ground for termination based upon its consideration of any evidence of past neglect and its determination

that there is a likelihood of future neglect if the child is returned to the parent.” *In re J.S.*, 377 N.C. 73, 78, 855 S.E.2d 487, 492 (2021).

In the instant case, the trial court’s termination order contains findings of facts which support its conclusion that a ground existed to terminate Mother’s parental rights to David. David was adjudicated a neglected juvenile in the trial court’s 29 January 2021 order. Additionally, Mother previously stipulated that David was neglected and since then Mother has done nothing to improve her situation in accordance with David’s needs. The trial court found that “Neither of [the] Respondent-Parents are able to meet the needs of [David] at this time” and “even though the visits between Mother and D.W. [David] went well”, “appropriate visits are not indicative to their ability to parent outside of a controlled environment while actively engaged in substance abuse.” This finding speaks to the correlation between Mother’s continued substance abuse and her inability to meet David’s needs prior to and at the time of the terminating hearing.

Specifically, it found that Mother failed to keep a safe home by allowing her home to be in disarray. The home contained cigarettes, an ash tray, lighters, and knives, which were all within David’s reach. Additionally, the trial court found that Mother failed to complete any of the therapeutic interventions prescribed in the various DSS plans over the last three years.

Beyond the physical shortcomings of Mother’s home, the trial court found she was unable to abstain from domestic violence which resulted in her losing a

temporary housing placement. It found “domestic violence is a part of the Respondent-Parents’ family life and it is causing Respondent-Mother’s housing to be in jeopardy.”

Even if the above findings were not themselves sufficient to support the trial court’s conclusion regarding the likelihood of future neglect, it also found that “Respondent-Mother has not addressed her physical health issues that interfere with her parenting, visits, and services.”

These findings demonstrate that the trial court assessed Mother’s ability to provide for David’s proper care and supervision and found it several lacking.

Accordingly, we affirm the termination of Mother’s parental rights to David because the findings of fact support a conclusion of neglect pursuant to N.C. Gen. Stat. § 7B-101(15), which is enough to constitute a termination of parental rights.²

III. Conclusion

For the reasons set forth above, we affirm the trial court’s termination of Parents’ parental rights to David.

AFFIRMED.

² Mother references in her brief that she had offered her sister as a possible placement option at a permanency placement hearing held in late 2021. The trial court references Mother’s sister as a possible placement option in the order from that hearing but found that it was not a proper time for David to start new relationships. It is not apparent from the record that the trial court made the findings required by statute to rule out a family member for placement. *See, e.g.*, N.C. Gen. Stat. § 7B-903(a1) (2021). However, neither Mother nor the Guardian ad Litem makes any argument concerning this issue in their respective appellate brief. We, therefore, do not consider this issue in this appeal.

IN RE: D.W., JR.

Opinion of the Court

Judges TYSON and COLLINS concur.

Report per Rule 30(e).