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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-166

Filed 3 October 2023

Burke County, Nos. 19JT58, 19JT59

IN RE:

A.L-R.T. and Z.J.T., Minor Children.

Appeal by respondent-mother from order entered 10 November 2022 by Judge Robert A. Mullinax Jr. in Burke County District Court. Heard in the Court of Appeals 6 September 2023.

*Kimberly Connor Benton for respondent-appellant-mother.*

*Ward & Smith, P.A., by Jordan M. Spanner, for appellee Guardian ad Litem.*

*Amanda C. Perez for appellee Burke County Department of Social Services.*

GORE, Judge.

Respondent-mother appeals the trial court's Order terminating her parental rights. This Court has jurisdiction pursuant to N.C. Gen. Stat. sections 7A-27(b) and 7B-1001(a)(7). Upon review, we affirm the trial court's Order.

I.

On 15 April 2019, Burke County Department of Social Services ("DSS") filed petitions alleging Z.T. ("Zade") and A.T. ("Allie") were neglected and dependent juveniles based on respondent-parents' mental health, substance abuse, and domestic

violence.<sup>1</sup> To address these concerns, respondent-mother and father<sup>2</sup> entered into an out-of-home services case plan. Both parents agreed to complete a mental health assessment and follow all recommendations; complete a substance abuse assessment and follow all recommendations; submit to random drug screens; complete parenting classes; and complete domestic violence assessments and follow all recommendations.

On 16 May 2019, the trial court adjudicated Zade and Allie, then seven-years-old and two-years-old, respectively, neglected and dependent and ordered that they remain in DSS custody. As of the adjudication hearing, respondent-mother had attended only one mental health appointment between November 2019 and May 2019. She had not completed a substance abuse assessment, a parental capacity assessment, a domestic violence assessment, nor had she attended parenting classes. Likewise, father had not completed a domestic violence assessment, parenting classes, or a parental capacity assessment.

Over the next three years, the parents eventually engaged in other parts of their case plans. By July 2019, the parents participated in substance abuse assessments, but neither parent provided accurate or complete information to the

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<sup>1</sup> Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

<sup>2</sup> Father was married to respondent-mother at the time of Allie's birth. However, he was determined by DNA paternity testing not to be Allie's father. He has been adjudicated to not be her father and has no parental rights to the child. He was part of the underlying case and had a case plan because he remained married to respondent-mother and would be in the home should the children return. Allie's biological father was added as a party in August 2019. Zade's biological father's parental rights were previously terminated in 2014. For ease of reading, we refer to "father" as to the father for both children.

assessor. In November 2019, the trial court ordered the parents to complete new substance abuse assessments, but respondent-mother did not comply until a year and a half later, in July 2021. Respondent-mother again did not provide an accurate or complete report to the assessor, and both parents continued to periodically have positive drug screens.

Additionally, the parents each completed mental health and domestic violence assessments, which resulted in recommendations that they engage in individual and couples' therapy. The parents also completed parenting classes and the parental capacity assessment.

As to respondent-mother, the assessor found that she has "very strong needs for nurturance and affection from her children" and "looks to her children to meet her own psychological and emotional needs[,] thus limiting her ability to properly discipline and oversee their behaviors." Moreover, the assessor noted respondent-mother "is at serious risk for relapse given the type and severity of the illnesses that are affecting her," and recommended that "[i]f her children are returned to her care, it will be very important that she be monitored to ensure that she is being consistent in implementing what is being discussed with her by her counselor and in-home therapists." The parents complied with the mental health treatment recommendations for a time, but as of the termination proceedings, they had ceased their individual treatment and couples' therapy.

On 24 February 2022, DSS filed the petition to terminate the parents' rights.

By this time, the children were five and ten years old and had been in foster care for almost three years. The petition was heard on 22 July 2022, 2 September 2022, and 15 September 2022. In an Order filed 10 November 2022, the trial court ultimately found grounds existed to terminate respondent-mother's parental rights under N.C. Gen. Stat. section 7B-1111(a)(1), (2), and (6), and concluded that it was in the children's best interests that her rights be terminated.

Respondent-mother filed written notice of appeal from the trial court's Order on 12 December 2022. Respondent-father did not appeal.

## II.

Respondent-mother argues the trial court erred in concluding that grounds existed to terminate parental rights based on prior neglect, N.C. Gen. Stat. § 7B-1111(a)(1) (2022), willfully leaving the children in foster care, § 7B-1111(a)(2), and dependency, § 7B-1111(a)(6). Additionally, respondent argues the trial court erred in concluding that termination of her parental rights was in the juveniles' best interests.

### A.

Termination of parental rights proceedings are conducted in two stages: adjudication and disposition. In the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a). This 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. 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. However, the trial court's conclusions of law are fully reviewable *de novo* by the appellate court.

If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest of the child, in accordance with N.C. Gen. Stat. § 7B-1110(a). The trial court's determination of the child's best interests is reviewed only for an abuse of discretion. Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.

*In re S.Z.H.*, 247 N.C. App. 254, 258, 785 S.E.2d 341, 345 (2016) (citation omitted).

**B.**

In reviewing the trial court's order, this Court need only establish that one ground adjudicated is substantiated by adequate findings of fact. *See In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (“[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights.”); *see also* § 7B-1111(a). If any of the adjudicated grounds “is supported by findings of fact based on clear, cogent and convincing evidence, the orders appealed from should be affirmed.” *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52 (cleaned up).

We elect to first review the trial court's adjudication of grounds under section 7B-1111(a)(1), which provides the trial court can terminate parental rights when the parent has neglected her children. A child is neglected when his 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.” § 7B-101(15) (2022). “In 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.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *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 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).

“When determining whether 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 D.M.*, 375 N.C. 761, 768, 851 S.E.2d 3, 9 (2020) (citation omitted). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *Id.* (citation omitted). A parent’s noncompliance with her case plan can only support termination of her parental rights when there is a “nexus between the components of the court-approved case plan with which the respondent failed to comply and the conditions which led to the child’s removal from the parental home.” *In re J.S.*, 374 N.C. 811, 815-16, 845 S.E.2d 66, 71 (2020) (cleaned up). However, “[t]he case plan is not just a

check list. The parents must demonstrate acknowledgment and understanding of why the juvenile entered DSS custody as well as changed behaviors.” *In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 524 (2010) (alteration in original).

Respondent-mother argues grounds for termination should not have been found considering she “made substantial progress on her case plan by addressing domestic violence, substance abuse, and her mental health needs.” Respondent-mother asserts “she is a fit and proper parent to care for her children,” and Zade and Allie are not at risk of neglect if returned to her care. In support of her position, respondent argues several of the trial court’s findings of fact are not supported by competent evidence in the record. We disagree.

While we agree that several findings of fact are more appropriately characterized as ultimate findings of fact or conclusions of law, it is unnecessary to summarily strike these findings from the record. *See In re M.R.D.C.*, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004) (cleaned up) (“If a finding of fact is essentially a conclusion of law, it will be treated as a conclusion of law which is reviewable on appeal.”). Further, resolving all the challenged findings on appeal is ultimately unnecessary to reach a determination that grounds for termination existed based on neglect.

While respondent-mother did engage in aspects of her case plan, “a parent’s compliance with his or her case plan does not preclude a finding of neglect.” *In re J.J.H.*, 376 N.C. 161, 185, 851 S.E.2d 336, 352 (2020). Beyond substantial compliance

with a case plan, our courts also consider evidence of the parent’s past and present drug use, *In re K.N.*, 373 N.C. 274, 284, 837 S.E.2d 861, 868 (2020), the parent’s lack of engagement in mental health treatment and substance abuse treatment, *In re K.B.*, 378 N.C. 601, 613, 862 S.E.2d 663, 673 (2021), and the parent’s inability or “refusal to acknowledge the effect of domestic violence on the children and her inability to sever her relationship with [her partner],” *In re M.C.*, 374 N.C. 882, 889, 844 S.E.2d 564, 569 (2020).

Respondent-mother does not dispute the following findings of fact, which are therefore binding on appeal:

34. On October 8, 2018, [respondent-mother] tested positive for amphetamines, methamphetamine, and opiates via both urine and hair follicle screens.

35. On October 17, 2018, [respondent-mother] tested positive for amphetamines, methamphetamine, and marijuana in a urine screen.

36. On November 15, 2018, [Zade] tested positive for amphetamines and methamphetamine via hair follicle testing. On November 15, 2018, [Allie] tested positive for methamphetamine, amphetamines and marijuana via hair follicle testing.

37. [Respondent-mother] explains her own positive drug screens with various ridiculous theories, including borrowing a hoodie, a hat, or hanging out with an inappropriate cousin. In the alternative, she explains the positive screens by taking Sudafed.

...

46. [Respondent-mother] and [father] married on March 25, 2017 and continue to reside together.



...

49. [Respondent-mother] has completed three substance abuse assessments. During the initial substance abuse assessment, [respondent-mother] self-reported an active prescription for opiates (Percocet) to address chronic back pain and acknowledged using cocaine at the age of 18. [Respondent-mother] reported to the assessor that she needed to be assessed because of a failed urine drug screen. [Respondent-mother] continued using the story that she tested positive for methamphetamine due to being around a cousin or using Sudafed.

50. [Respondent-mother] has provided multiple and numerous positive drug screens since the entry of the 2019 nonsecure order. This includes positive hair follicle tests for methamphetamines on October 21, 2019 and March 11, 2020.

...

52. [Respondent-mother] stated that she has been prescribed Percocets in the past, the dosage of which would be insufficient to justify her consistently positive drug screens.

...

55. [Respondent-mother] completed a parenting capacity evaluation . . . . [The assessor] wrote that [respondent-mother] does have some positive attributes of a parent and would be unlikely to present any direct danger to her children but expressed concerns about her ability to protect her children from unsafe environments.

56. [The assessor] stated in his assessment that [respondent-mother] is reluctant to acknowledge even normal shortcomings and difficulties. She denied having problems common to all parents. According to [the assessor], [respondent-mother] looks to her children for her own psychological needs, making it difficult for her to provide for the children's emotional and behavioral needs.

He stated that [respondent-mother] would have difficulty adjusting as is necessary for a parent of two small children.

...

61. [Father] has his own case plan due to his ongoing marriage to [respondent-mother] and residence in the home. Throughout the case, [father] has had multiple positive drug screens, the most recent of which was on February 24, 2022 and indicated a positive result for THC.

...

69. [Respondent-mother] attended therapy for some time . . . but does so no longer.

...

72. [Respondent-mother] hasn't seen her therapist in so long she "can't remember."

...

80. [Respondent-mother] requested narcotics from various pain clinics at least three separate occasions since the 2019 nonsecure order.

81. [Respondent-mother] acknowledges that [father] suffers from Post-Traumatic Stress Disorder . . . . On two separate occasions, law enforcement was called to their residence as a result of disagreements between [respondent-mother] and [father].

82. On April 13, 2019, [respondent-mother's] stepfather choked her and hit her in the stomach in the presence of the children at her mother's residence, a residence that she suggested would be appropriate for the children as a kinship placement. She acknowledges her stepfather's temper, yet still allowed her children to stay in his residence.

...

86. There was a period of time where [respondent-mother] cared for her mamaw and mother. Adult Protective Services was contacted on two separate occasions during this time period and found mamaw's residence to be cluttered and to have an odor due to feces on "pee pads."

87. [Respondent-mother] denies her own substance abuse issues as well as any incidents of domestic violence with [father], yet she stipulated to specific findings in the adjudication order acknowledging her own substance abuse issues and a specific incident of domestic violence with [father].

Respondent-mother has consistently failed to acknowledge the seriousness of positive drug screens for her and her children. Respondent's unwillingness to provide an accurate and complete account of her substance abuse, her evasive or "ridiculous" explanations for her positive drug screens, and her continued attempts to obtain narcotics, demonstrate she has not made reasonable progress in addressing a safety risk that initially led to Zade and Allie being removed from her home.

Respondent-mother also continues to downplay the domestic violence between herself and father. Respondent stipulated to a particular incident involving domestic violence in her home, and when asked about her history of domestic violence with father, she said there was "none." Further, the unchallenged findings indicate father's ongoing substance abuse creates an injurious environment for the children in respondent-mother's home.

In sum, the unchallenged findings of fact show that respondent-mother complied with parts of her case plan, but her progress was not sufficient to alleviate

the safety concerns for Zade and Allie. Respondent-mother demonstrated a consistent inability to acknowledge the severity of her substance abuse and mental health issues, and she continued residing with father despite concerns about his drug use, mental health, and domestic violence. "[A] parent must be able to understand the past neglect her children suffered while in her care; comprehend how to keep them safe from harm through proper care, supervision, discipline, and provision of a living environment not injurious to their welfare; and demonstrate an ability to do so." *In re V.S.*, 380 N.C. 819, 827, 869 S.E.2d 698, 703 (2022) (citing § 7B-101(15)). "The binding findings of fact in this case reveal that respondent lacked this ability at the time of the termination-of-parental-rights hearing. Therefore, we affirm the trial court's adjudication that a ground existed to terminate respondent's parental rights." *Id.*

**C.**

If a trial court concludes that grounds for terminating parental rights exist, it then proceeds to the dispositional stage in which it determines whether terminating parental rights is in the best interests of the child. § 7B-1110(a) (2022). We review the trial court's assessment of a juvenile's best interest at the dispositional stage for abuse of discretion. *In re Z.A.M.*, 374 N.C. 88, 95, 839 S.E.2d 792, 797 (2020). On disposition, the trial court may consider any evidence that it finds to be relevant, reliable, and necessary. § 7B-1110(a).

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.

*Id.*

Here, respondent-mother argues that termination of her parental rights was not in the children's best interests because the children are not in pre-adoptive placement; she identified an alternative childcare arrangement; and she still has a bond with the children, even if it has deteriorated.

Contrary to respondent's arguments, the trial court considered and made written findings regarding each specifically enumerated factor in section 7B-1110(a). Respondent-mother asserts the juveniles are not in pre-adoptive placements, and Zade's autism diagnosis makes him less likely to be adopted. However, a lack of pre-adoptive placement at the time of a termination proceeding is not a barrier to the termination of parental rights. *See In re A.J.T.*, 374 N.C. 504, 512, 843 S.E.2d 192, 197 (2020). Further, general concerns "that children with behavioral challenges

and/or developmental delays, as well as children in foster care, are difficult to place with adoptive families . . . cannot overcome the particularized evidence in this case supporting the trial court’s factual findings that each of these children had a high probability of being adopted.” *In re J.H.*, 373 N.C. 264, 274, 837 S.E.2d 847, 854 (2020).

Respondent-mother challenges finding of fact 22, that “no other appropriate individuals have been identified that could assume custody or guardianship of the juveniles.” However, the trial court was not required to determine whether an individual is available for custody or guardianship. And regardless, finding of fact 22 is appropriate and supported by the evidence. The court was able to observe the testimony of “Cousin Robin” and determine whether she was an appropriate alternative caregiver. The record reflects that respondent-mother had continuously attempted to provide various caretakers for her children to avoid the termination of her rights. Despite this fact, the mother did not present Cousin Robin as an option until the termination had been continued several times for various reasons, and the case had been ongoing for more than three years. Cousin Robin also testified during disposition that she had only seen the children once, years before, and did not have a relationship with them. There was no evidence that Cousin Robin would have been approved or considered an appropriate placement for the juveniles.

The trial court considered the bond that the juveniles had with respondent-mother and determined that termination was still in the best interests of the children.

*Opinion of the Court*

The social worker testified that the children were no longer asking about their mother, and Zade, the older child, did not want to talk about her. The bond between a mother and child is only one of the factors that the court is to consider and the court may provide weight to each factor on its own accord. *See In re E.S.*, 378 N.C. 8, 14, 859 S.E.2d 185, 190 (2021).

The trial court did not err in weighing each of the required factors enumerated in N.C. Gen. Stat. section 7B-1110(a) or abuse its discretion in determining that it is in Zade and Allie's best interests to terminate respondent-mother's parental rights.

**III.**

The trial court's adjudication of grounds to terminate respondent-mother's parental rights based on neglect is supported by clear, cogent, and competent evidence in the record. Respondent-mother has failed to acknowledge her own responsibility in creating the conditions that led to the juveniles' removal from her care. The trial did not abuse its discretion in determining that termination of respondent-mother's parental rights was in Zade and Allie's best interests. Accordingly, we affirm the trial court's Order.

**AFFIRMED.**

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).