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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-508

Filed 21 November 2023

New Hanover County, No. 21 JT 40

IN THE MATTER OF:

C.H.

Appeal by respondent-mother from order entered 24 February 2023 by Judge J. H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 31 October 2023.

*Garron T. Michael for petitioner-appellee New Hanover County Department of Social Services.*

*Poyner Spruill LLP, by Rohun S. Shah and Samuel B. Holder, for guardian ad litem.*

*Peter Wood for respondent-appellant mother.*

ZACHARY, Judge.

Respondent-Mother appeals from the trial court's order terminating her

parental rights to her minor child, “Carolyn.”<sup>1</sup> After careful review, we affirm.

## **I. Background**

Carolyn was born in July 2014 to Respondent-Mother and Christopher Hall, who has since relinquished his parental rights to Carolyn and therefore is not a party to this appeal.

On 25 March 2021, after receiving multiple child protective services reports relating to Respondent-Mother’s substance abuse, among other issues, Petitioner New Hanover County Department of Social Services (“DSS”) filed a juvenile petition alleging that Carolyn was a neglected juvenile. Between December 2020 and February 2021, the substances for which Respondent-Mother had tested positive included heroin metabolites, fentanyl, norfentanyl, morphine, tramadol, and oxycodone. On the same day that the petition was filed, the trial court entered an order granting nonsecure custody of Carolyn to DSS. The trial court appointed a guardian ad litem on 31 March 2021.

The parties stipulated to an adjudication of neglect, agreeing that Carolyn did “not receive proper care, supervision, or discipline from her parent, guardian,

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<sup>1</sup> We use the pseudonym adopted by the parties for ease of reading and to protect the juvenile’s identity.

custodian, or caretaker and live[d] in an environment injurious to the welfare” based, in significant part, on Respondent-Mother’s substance abuse issues. On 20 May 2021, the trial court accepted the parties’ stipulation and entered an order adjudicating Carolyn to be a neglected juvenile. The trial court continued DSS’s legal custody of Carolyn and ordered Respondent-Mother to comply with a family services agreement, including submitting to random drug screens and completing parenting classes. The trial court also granted Respondent-Mother supervised visitation with Carolyn.

Respondent-Mother failed to comply with the random drug screens as ordered; she failed to submit to 12 of 19 requested screens, and she continued to test positive for illicit substances when she submitted. On 21 October 2021, the trial court entered a permanency planning order in which it adopted a primary plan of adoption, with a secondary plan of reunification. The trial court also ordered DSS to file a petition for the termination of parental rights within 60 days. DSS filed the termination petition on 1 November 2021.

After a temporary stay, the matter came on for hearing on 5 December 2022 and continued on 3 and 6 January 2023. On 24 February 2023, the trial court entered an order finding that grounds for termination existed on the basis of neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2021). The trial court further concluded that termination was in Carolyn’s best interest. Accordingly, the trial court

terminated Respondent-Mother's parental rights to Carolyn. Respondent-Mother timely filed notice of appeal.

## **II. Discussion**

Respondent-Mother argues that the trial court erred by concluding that grounds for termination of her parental rights existed on the basis of neglect "because the trial court erroneously based a finding of a probability of future neglect on [her] substance abuse when the evidence did not show substance abuse had harmed Carolyn or placed her at risk of harm." We disagree.

### **A. Standard of Review**

"In conducting a termination of parental rights proceeding, the trial court begins by determining whether any of the grounds for termination delineated in [N.C. Gen. Stat.] § 7B-1111(a) exist." *In re R.L.R.*, 381 N.C. 863, 868, 874 S.E.2d 579, 585 (2022) (citation omitted). "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) . . . ." *Id.* (cleaned up). "An adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights." *Id.* at 868, 874 S.E.2d at 585–86 (cleaned up).

Our appellate courts "review the trial court's adjudication under [N.C. Gen.

Stat.] § 7B-1111(a) to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re J.D.O.*, 381 N.C. 799, 805, 874 S.E.2d 507, 514 (citation omitted), *reh’g denied*, 382 N.C. 727, \_\_\_ S.E.2d \_\_\_ (2022). “Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings needed to sustain the trial court’s adjudication.” *Id.* (citation omitted). “The issue of whether a trial court’s findings of fact support its conclusions of law is reviewed de novo.” *Id.* (citation omitted).

## **B. Analysis**

Respondent-Mother acknowledges, at the outset, that she “has a substance abuse problem.” Additionally, “[s]he concedes that the trial court had clear, cogent and convincing evidence to support its findings of substance abuse.” Nevertheless, Respondent-Mother denies “that the substance abuse rose to the level of neglect” because, she asserts, “[h]er substance abuse neither harmed Carolyn nor placed her at risk of harm.”

N.C. Gen. Stat. § 7B-1111(a)(1) provides that the trial court may terminate parental rights if “[t]he parent has . . . neglected the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(1). Pertinent to the case before us, “[a] juvenile is deemed to be neglected if the juvenile does not receive proper care, supervision, or discipline from his or her

parent or if the parent creates or allows to be created an environment injurious to the juvenile's welfare." *J.D.O.*, 381 N.C. at 810, 874 S.E.2d at 517; *see also* N.C. Gen. Stat. § 7B-101(15).

In cases such as this, where the juvenile has been out of her parent's custody for a significant period of time prior to the termination hearing, "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." *J.D.O.*, 381 N.C. at 810, 874 S.E.2d at 517. In these cases, evidence of prior neglect by the parent is relevant and admissible, but not dispositive:

Evidence 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, but the trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect. 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*.

*Id.* (citation omitted).

With respect to substance abuse, "[a] finding of fact that a parent abuses alcohol, without proof of adverse impact upon the child, is not a sufficient basis for an adjudication of termination of parental rights for neglect." *In re Phifer*, 67 N.C. App.

16, 25, 312 S.E.2d 684, 689 (1984). This principle applies for all substance-abuse issues, not just alcoholism. *In re D.T.N.A.*, 250 N.C. App. 582, 585–86, 801 S.E.2d 642, 645 (2016). Accordingly, “the burden is upon the petitioner to show that the parent’s substance abuse would prevent the parent from providing for the proper care and supervision of the child. A mere showing that a parent has abused alcohol or drugs is insufficient to terminate parental rights.” *Id.* (citation omitted).

Although Respondent-Mother challenges several of the trial court’s findings of fact, she does not actually challenge the evidentiary support underpinning those findings. Rather, her argument essentially boils down to her assertion that, “[w]hile the evidence did support findings of a substance abuse problem as reflected in extensive findings of fact, the evidence did not show any harm or risk of harm to Carolyn.” Our careful review of the record, including the trial court’s unchallenged findings of fact, reflects otherwise.

As stated above, unchallenged findings of fact “are binding on appeal.” *J.D.O.*, 381 N.C. at 805, 874 S.E.2d at 514 (citation omitted). Among the unchallenged—and therefore, binding—findings of fact in the termination order, the trial court found that Carolyn “had 27 absences from school during the 2019-2020 school year” and 107 absences, between virtual and in-person classes, during the 2020-2021 school year. The trial court explained how Respondent-Mother’s behavior specifically harmed

Carolyn's education:

School officials made several attempts to engage Respondent-Mother including in person and phone conferences, home visits, purchasing a hotspot and iPad for virtual learning, and sending taxi cabs to the home to pick up [Carolyn] for school. Respondent-Mother would not send [Carolyn] to school and would not have [Carolyn] engage in virtual learning. Respondent-Mother would state that [Carolyn] would not get up early enough for school, but did not explain why she was not assisting [Carolyn] in getting [Carolyn] up in time. On those days, she still would not bring [Carolyn] into school late. [Carolyn] did not attend school consistently until she entered foster care. Respondent-Mother made no effort to have [Carolyn] engage in school while [Carolyn] was in her care. Missing school for that period of time was a significant impact to [Carolyn] as she missed her first-grade education.

Another unchallenged—and therefore, binding—finding of fact documents Respondent-Mother's troubling behavior during her supervised visitation with Carolyn:

Despite completing parenting classes, Respondent-Mother's behavior has been inappropriate during visits, and she still demonstrates parenting deficits that negatively affect her ability to provide appropriate care for [Carolyn]. There were numerous visits where Respondent-Mother was observed to be nodding off – falling asleep to the point where [Carolyn] noticed her falling asleep and tried to wake her up. . . . Respondent-Mother has been combative and argumentative toward the social worker and other visitation staff which is upsetting for [Carolyn]. There is a noticeable pattern of negative behavior by [Carolyn] after contact or visits with Respondent-Mother



that has affected [Carolyn]’s life at home and at school. [Carolyn] will have inconsolable bouts of crying, screaming, hitting the foster parent when frustrated, choking another student at school with a jump rope during recess, throwing water bottles and screaming during class time. Respondent-Mother is unable or unwilling to understand this effect on [Carolyn].

DSS additionally cites the numerous unchallenged findings of fact documenting Respondent-Mother’s polysubstance abuse—including numerous failed drug screens, often indicating positive test results for multiple substances—to assert that “the longevity and persistence of [Respondent-]Mother’s substance use” has contributed to her “failure to change her behavior and inability to maintain sobriety throughout this case.” Indeed, Respondent-Mother failed to submit to 37 of 57 scheduled drug tests at the time of the termination hearing. Moreover, the trial court found that Respondent-Mother’s “addiction has continued unfettered” and “she continues to routinely test positive for multiple controlled substances” despite her participation in outpatient treatment. Respondent-Mother’s “drug screen from November 2022 ha[d] the highest level of fentanyl than any of her drug screens over a two-year period.” As the trial court explained:

Respondent-Mother completely minimizes her addiction and role in [Carolyn]’s neglect. She has a pattern of routinely blaming others for her problems and is unwilling to . . . accept any responsibility for her own behavior. She lacks insight into how deadly her ongoing addiction is and

how it is a danger to her child.

These unchallenged—and therefore, binding—findings of fact amply “show that [Respondent-Mother] had failed to resolve her substance abuse issues to a degree that would allow her to reliably care for” Carolyn. *J.D.O.*, 381 N.C. at 819, 874 S.E.2d at 522.

This case is reminiscent of several cases recently decided by our Supreme Court. In *J.D.O.*, our Supreme Court determined that findings of fact documenting a parent’s “continued substance abuse . . . combined with her refusal to regularly comply with her case plan’s requirement[s]” addressing that substance abuse may sufficiently support a conclusion that future neglect is likely if her child is returned to her care, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *Id.* at 820, 874 S.E.2d at 523; *see also In re M.S.L.*, 380 N.C. 778, 787, 869 S.E.2d 662, 667 (affirming termination of the respondent-father’s parental rights where he “continued to use controlled substances, contrary to the recommendations from his parenting capacity assessment and knowing the trial court’s stated plan for the juvenile[.]” and the respondent-father “also failed to recognize the severity of his continuous drug abuse and was repeatedly dishonest with the trial court about his continued cocaine use”), *reh’g denied*, 381 N.C. 713, \_\_\_ S.E.2d \_\_\_ (2022); *In re M.Y.P.*, 378 N.C. 667, 677–78, 862 S.E.2d 773, 781 (affirming termination of the respondent-father’s parental rights

based in part on his failure to complete a case plan where “substance abuse was also identified as an area of need for services, and the trial court could properly conclude that failure to address this issue could lead to a repetition of neglect”), *reh’g denied*, 379 N.C. 685, \_\_\_ S.E.2d \_\_\_ (2021).

Respondent-Mother’s argument is unpersuasive. The trial court’s findings of fact were substantially supported by competent evidence in the record, and they support the trial court’s conclusions of law, in turn. The trial court’s adjudication that the ground of neglect existed for the purpose of terminating Respondent-Mother’s parental rights to Carolyn is affirmed.

Finally, Respondent-Mother makes no argument concerning the trial court’s conclusion that termination of her parental rights is in Carolyn’s best interest. Accordingly, the trial court’s order terminating Respondent-Mother’s parental rights to Carolyn is affirmed.

### **III. Conclusion**

For the foregoing reasons, we affirm the trial court’s order.

**AFFIRMED.**

Judges STADING and THOMPSON concur.

Report per Rule 30(e).