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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-428

Filed 19 December 2023

New Hanover County, No. 17JT139

IN RE: L.A.R., A Minor Juvenile.

Appeal by Respondent-Mother from Order entered 16 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 Petitioners-Appellees.

Mercedes O. Chut for Respondent-Mother.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Mother appeals from an Order entered 16 February 2023 terminating her parental rights to her minor child pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). The Record before us tends to reflect the following:

On 15 May 2017, New Hanover County Department of Social Services (DSS) filed a Juvenile Petition alleging the minor child to be a dependent juvenile. The Juvenile Petition alleged on or about 13 May 2017, the minor “child has no responsible adult capable of providing care for him at this time as his father is deceased and [Respondent-Mother] has been arrested as a suspect in the father’s homicide.” DSS obtained nonsecure custody on 13 May 2017, and Lance¹ was placed in foster care. Respondent-Mother remained incarcerated without bond pending trial until 12 October 2018. On 3 August 2017, the trial court entered an Order adjudicating Lance to be a dependent juvenile by way of stipulation by the parties.

Following a permanency planning hearing, the trial court entered an Order on 27 April 2018, placing Lance in the guardianship of his paternal aunt and uncle (Petitioners). On 12 October 2018, a jury found Respondent-Mother not guilty by reason of insanity for First-Degree Murder. Respondent-Mother was thereafter committed to the Central Regional State Hospital (Butner) for psychiatric treatment. At Respondent-Mother’s 2021 and 2022 civil commitment hearings, she consented to recommitment for another year of mental and behavioral health treatment at Butner.

During her commitment at Butner, Respondent-Mother has voluntarily taken her prescribed, court-ordered medications. Respondent-Mother has spent time during her treatment at both the medium- and minimum-security level housing

¹ The minor child is referred to by the parties’ stipulated pseudonym.

commitments. During her time at the minimum housing commitment, Respondent-Mother started experiencing breakthrough psychosis while being fully medication-compliant and was moved back to the medium-level housing.

On 6 July 2020, Petitioners filed a Petition to terminate Respondent-Mother's parental rights to Lance. The Petition was heard over the course of three days—28 November, 29 November, and 2 December 2022. On 16 February 2023, the trial court entered an Order terminating Respondent-Mother's parental rights. The trial court made 128 individual Findings of Fact extensively detailing its factual determinations. Ultimately, the trial court found:

124. The [c]ourt finds a clear pattern of both abuse and neglect of the Juvenile by Respondent, the Juvenile lived in a dangerous environment with Respondent before his removal by DSS, both as evidenced by therapy necessary throughout his whole life since the death of his father.

125. The Juvenile has suffered such extreme childhood trauma which imprints on the brain and creates a lifelong risk. The evidence presented covers the Juvenile's entire life of abuse and neglect by Respondent and said abuse and Respondent's behavior is the nexus of the Juvenile's psychological suffering.

126. After a careful review of Respondent's medical records from Butner, there is a prior history of psychiatric illness, before and after the Juvenile's birth, DSS involvement before the death of the Juvenile's father, and the continued instability of the Respondent's mental health with the continued court ordered and use of medication.

127. Dr. Wolfe's testimony, as declared an expert in the field of forensic psychiatry, is clear that for schizophrenic patients to feel well over time after compliance with medication to stop taking their medication. Even with Dr. Wolfe's medical study, after (4-

5) four to five years, Respondent has shown a history of such actions of medication noncompliance and the doctor statistically cannot show that Respondent can be returned safely to the community.

128. There is a high likelihood of repetition for the Respondent with respect to abuse and neglect of the Juvenile based upon the continuance of Respondent's mental health illness of schizophrenia, bipolar disorder, and lack of psychiatric instability with or without treatment.

Based in relevant part on these Findings, the trial court concluded grounds exist to terminate Respondent-Mother's parental rights to Lance pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), and it was in the best interests of Lance to terminate Respondent-Mother's parental rights. Respondent-Mother timely filed written Notice of Appeal on 21 February 2023.

Issues

The dispositive issues on appeal are: (I) whether the trial court's Findings of Fact are supported by competent evidence; and (II) whether the trial court erred in concluding grounds exist to terminate Respondent-Mother's parental rights to Lance pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Analysis

"At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground for termination exists." *In re O.J.R.*, 239 N.C. App. 329, 332, 769 S.E.2d 631, 634 (2015) (citations omitted); *see also* N.C. Gen. Stat. § 7B-1109(f) (2021).

Therefore, “[t]his 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.” *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015) (citation omitted). “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.” *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citation and quotation marks omitted). “[T]he trial court’s findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court.” *Id.* at 532, 679 S.E.2d at 909. We review the trial court’s conclusions of law *de novo*. *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014) (citation omitted).

I. Challenged Findings of Fact

Respondent-Mother challenges numerous Findings—either in whole or in part—as not supported by clear and convincing evidence. Respondent-Mother takes issue less with specific evidentiary facts but more with the credibility of the evidence supporting the Findings, the weight given to testimony by the trial court, and conflicts in the evidence.

“Credibility, contradictions, and discrepancies in the evidence are matters to be resolved by the trier of fact, here the trial judge, and the trier of fact may accept or reject the testimony of any witness.” *Smith v. Smith*, 89 N.C. App. 232, 235, 365

S.E.2d 688, 691 (1988) (citation omitted). It is within the province of the trial court to determine the credibility of the witnesses and the weight to be attached to their testimony, and the inferences legitimately to be drawn therefrom in exactly the same sense that a jury should do in the trial of a case. *Hodges v. Hodges*, 257 N.C. 774, 779, 127 S.E.2d 567, 571 (1962). Our review of the Record and transcript reveals that while there was conflicting evidence, there was sufficient evidence to support the trial court's Findings—and the inferences drawn from the facts—regarding the impact of Respondent-Mother's behavior on Lance.

In particular, while the trial court made extensive evidentiary Findings, Findings 124, 125, 126, 127, and 128 are Ultimate Findings synthesizing the trial court's reasoning for its decision. Respondent-Mother specifically challenges Findings 126, 127, and 128 as unsupported by the evidence. First, Finding 126 is supported by both Dr. Wolfe's testimony and Respondent-Mother's medical records. As to Finding 127, Respondent-Mother contends: "The evidence does not support any part of finding 127, except the clause that Dr. Wolf[e] was 'declared an expert in the field of forensic psychiatry.'" The Record reflects Finding 127 is supported by Dr. Wolfe's testimony. Respondent-Mother also challenges Finding 128 as unsupported by the evidence. This Finding—that there is a likelihood of repetition of neglect—is supported by both Dr. Wolfe and Dr. Feizi's testimony as well as Respondent-Mother's medical records. Thus, the trial court's Findings, including its Ultimate Findings, are supported by evidence in the Record.

II. Likelihood of Future Neglect

Respondent-Mother contends the trial court erred in concluding grounds exist to terminate Respondent-Mother's parental rights to Lance pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). We disagree.

Parental rights may be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), if “[t]he parent has . . . neglected the juvenile” within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2021). Generally “[i]n 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., J.K.W., T.L.W., & T.L.W.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation and quotation marks omitted). However, when “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” *Id.* (citation and quotation marks omitted). “In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect.” *Id.* (citation and quotation marks omitted). “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) (citation and quotation marks omitted).

Here, Lance was not in Respondent-Mother’s physical custody at the time of the termination hearing and had not been since May 2017. Further, at the time of the termination hearing, it was undisputed that Respondent-Mother was to remain “for another 365 days of commitment to mental and behavioral health treatment at Butner.” Thus, the trial court’s Ultimate Finding, “the continued instability of Respondent-Mother’s mental health” combined with the “clear pattern of both abuse and neglect” of Lance supports its determination there is a high probability of future neglect if Lance is returned to Respondent-Mother. Therefore, the trial court’s Findings of Fact support its Conclusion Lance was neglected. Consequently, the trial court did not err in concluding Respondent-Mother’s rights were subject to termination based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court’s Order terminating Respondent-Mother’s parental rights to Lance.

AFFIRMED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).