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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-835

Filed 19 March 2024

Robeson County, No. 20 JT 111

IN THE MATTER OF: Z.C.

Appeal by Respondent-Mother from order entered 19 May 2023 by Judge Brooke L. Clark in Robeson County District Court. Heard in the Court of Appeals 5 March 2024.

*J. Edward Yeager, Jr., for Petitioner-Appellee Robeson County Department of Social Services.*

*Jason R. Page for Respondent-Appellant Mother.*

*Parker, Poe, Adams & Bernstein LLP, by Adam C. Setzer, for guardian ad litem.*

GRIFFIN, Judge.

Mother appeals from the trial court's order terminating her parental rights to her minor child, Zebulon.<sup>1</sup> Mother contends the trial court erred as there was not clear, cogent, and convincing evidence that grounds existed to terminate her parental rights. We hold the trial court did not err and affirm the trial court's order

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<sup>1</sup> We use a pseudonym for ease of reading and to protect the identity of the juvenile. See N.C. R. App. P. 42(b).

terminating Mother's parental rights.

### **I. Factual and Procedural Background**

On 10 March 2020, Robeson County Department of Social Services received a report alleging Mother had given birth to Zebulon and, at the time, both Mother and Zebulon tested positive for "benzos, cocaine, and THC." DSS was already involved with the family, as Mother's other four children had been removed from her custody because of Mother's issues with substance abuse, mental health, and housing. DSS became further involved with Zebulon as he had to be hospitalized for months due to respiratory and other issues. On 24 April 2020, DSS filed a petition alleging Zebulon was a neglected juvenile. DSS also obtained nonsecure custody of Zebulon.

On 5 August 2020, the trial court conducted adjudicatory and dispositional hearings in which Zebulon was adjudicated neglected. Mother was instructed to enter a case plan to address issues including, among other things: housing, substance abuse, mental health, and parenting skills. The trial court entered its orders on adjudication and disposition on 8 September 2020. The court conducted several permanency planning hearings. Over this period, the primary plan for Zebulon shifted from reunification with Mother to adoption as the court repeatedly found Mother showed an overall lack of progress. On 7 September 2022, the trial court held a permanency planning hearing and entered an order authorizing and ordering DSS to pursue termination of parental rights.

On 10 October 2022, DSS filed a petition to terminate parental rights. On 1

February 2023, the matter came on for hearing in Robeson County District Court. On 19 May 2023, the trial court entered an order terminating the parental rights of both Mother and Father.

Mother timely filed notice of appeal.

## **II. Standard of Review**

We review a trial court’s termination order to determine “whether the findings of fact are supported by clear, cogent and convincing evidence and whether [the] findings, in turn, support the conclusions of law.” *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004). Findings of fact left unchallenged are binding on appeal. *See In re J.M.*, 275 N.C. App. 517, 521, 854 S.E.2d 158, 161 (2020). We review the trial court’s conclusions of law de novo. *See In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022).

## **III. Analysis**

Mother contends the trial court erred as there was not clear, cogent, and convincing evidence that grounds existed to terminate her parental rights under N.C. Gen Stat. § 7B-1111(a)(1), (a)(2), or (a)(3). We disagree.

Under North Carolina General Statutes, section 7B-1111(a)(1), the trial court may terminate a parent’s parental rights where “[t]he parent has abused or neglected the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(1) (2023). A juvenile “shall be deemed to be [ ] neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of [N.C. Gen. Stat. § 7B-101].” *Id.* N.C. Gen. Stat. § 7B-101(15) defines

neglected juvenile as a juvenile whose parent has, among other things, failed to provide proper care or supervision, or has created a living environment injurious to the welfare of the juvenile. *See* N.C. Gen. Stat. § 7B-101(15)(a), (e) (2023).

In order to determine neglect in cases where the child “has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis[.]” *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001); *see also In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (“[R]equiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” (citation omitted)). “[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). However, while prior adjudications of neglect may be admitted and considered, they are rarely sufficient on their own to support an order terminating parental rights. *Id.* at 713–14, 319 S.E.2d at 231. Therefore, the court “must also consider evidence of changed conditions in light of the history of neglect by the parent, and the probability of a repetition of neglect.” *In re B.R.L.*, 381 N.C. 56, 58–59, 871 S.E.2d 491, 493 (2022) (internal marks and citation omitted). The determinative factors in the court’s analysis “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.” *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232.

Here, Mother argues there was not clear, cogent, and convincing evidence that grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) where the court did not specifically find she had neglected her son in the past and where DSS failed to show she would likely neglect him in the future. Mother specifically challenges the trial court's Findings of Fact 7, 10, 13, 19, and 24.

Mother challenges the following portions of the trial court's Findings of Fact 7, 10, 13, and 19:

7. [T]he [Premier Behavioral] provider had continued concerns that Respondent Mother was still using[.]
10. Respondent Mother was not able to meaningfully participate in child characteristics[.]
13. [Zebulon] was being fed regular food by mouth. This was extremely dangerous[.]
19. Respondent Mother has not adequately addressed her substance use issue[.]

Despite Mother's contentions, the record contains clear, cogent, and convincing evidence to support these findings.

Specifically, as to Finding of Fact 7, a DSS supervisor testified at the termination hearing, that while Mother did complete substance abuse treatment with Premier Behavioral, providers stated there were still concerns about Mother using drugs. Additionally, a court report from 5 September 2020 contained notes from a social worker who stated she had spoken with a provider at Premier Behavioral who maintained that while Mother had completed substance abuse classes, it was

recommended she continue to attend therapy to address further issues.

Regarding Findings of Fact 10 and 13, testimony at the hearing concerning child characteristics tended to show that while Mother was involved with Zebulon's care, she missed several doctor's appointments. Further, Zebulon was hospitalized due to malnutrition and was diagnosed with failure to thrive. The DSS supervisor testified Mother disobeyed doctor's orders and fed Zebulon by mouth instead of through his feeding tube despite him showing signs of aspiration. Moreover, a court report from 25 May 2022 indicated the DSS supervisor was informed by nurses in February 2022 of concerns of Mother's ability to care for Zebulon. Mother had been tampering with Zebulon's trach tube, letting the rails down on his crib, falling asleep while supervising him, and interfering with his medical devices. Additionally, a foster care adoption supervisor testified at the hearing noting Mother had further failed to keep in contact with the agency and foster parent regarding Zebulon's medical care.

As to Finding of Fact 19, evidence presented at the hearing indicated Mother refused to submit to twenty random drug screens and tested positive on at least two occasions when she submitted to testing—one of which occurred only several weeks before the termination proceedings.

This evidence constitutes clear, cogent, and convincing evidence which supports the trial court's Findings of Fact 7, 10, 13, and 19. These Findings are therefore binding before this Court.

Finally, Mother challenges Finding of Fact 24 which states, in relevant part:

Because the Respondent Mother [ ] refused to work a plan to try and have the child placed back with here [sic], there is a high likelihood that the neglect would continue.

However, evidence referenced above together with other record evidence tended to show the following:

Zebulon was adjudicated neglected on 5 August 2020. Mother was then asked to engage in a case plan which required her to work on her mental health, housing, child characteristics, and to participate in substance abuse treatment. Although she did complete a substance abuse assessment, providers had continued concerns she was using drugs. DSS requested Mother submit to random drug screenings. Mother refused twenty of those screenings and tested positive on more than one of the occasions she submitted to testing. Further, Mother did complete a mental health assessment but refused to comply with treatment. Mother failed to participate in training sessions on how to care for Zebulon's needs and while engaging in his care, missed appointments with his specialist. Moreover, while in Mother's care, Zebulon was diagnosed with failure to thrive and had to be hospitalized for nearly three months. Mother did not feed Zebulon properly as she continued to feed him by mouth when it was necessary he be fed through a feeding tube. Finally, Mother failed to adequately address her substance abuse issues, as on 18 January 2023, she tested positive for cocaine.

This evidence constitutes clear, cogent, and convincing evidence which

supports the challenged portion of Finding of Fact 24. Moreover, this record evidence together with the trial court's prior adjudication order is indicative not only of Mother having previously failed to provide proper care and supervision for Zebulon, but also of Mother's failure to make any meaningful changes in her behavior since Zebulon was adjudicated neglected.

Because the evidence within the trial court's Findings of Fact 7, 10, 13, 19, and 24 is clear, cogent, and convincing evidence of not only prior neglect, but a probability of repeated neglect in the future, the trial court made the required findings to support its conclusion that grounds existed to terminate Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1).

We need not address Mother's contentions regarding section 7B-1111(a)(2) or (a)(3). *See In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) ("[A]n adjudication of any single ground for terminating a parent's rights under [N.C. Gen. Stat. § 7B-1111(a)] will suffice to support a termination order." (citation omitted)).

#### **IV. Conclusion**

We hold the trial court did not err as there was clear, cogent, and convincing evidence that grounds existed to terminate Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1).

**AFFIRMED.**

Judges HAMPSON and STADING concur.

Report per Rule 30(e).