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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-622

Filed 19 March 2024

Yancey County, Nos. 20 JT 10-12

IN THE MATTER OF: D.G.E., L.M.A.E., A.R.E.

Appeals by respondent-father and respondent-mother from orders entered 14 February 2023 by Judge Rebecca Eggers-Gryder in Yancey County District Court. Heard in the Court of Appeals 20 February 2024.

*Daniel M. Hockaday for petitioner-appellee Yancey County DSS.*

*Robert W. Ewing for respondent-appellant mother.*

*Rebekah W. Davis for respondent-appellant father.*

*M. Greg Crumpler for Guardian ad Litem.*

DILLON, Chief Judge.

Respondents (“Parents”) are the natural father and mother of three minor children, D.G.E. (“Daniel”), A.R.E. (“Amy”), and L.M.A.E. (“Leah”).<sup>1</sup> On 14 February 2023, the trial court entered separate orders terminating the parental rights of Respondent Mother (“Mother”) as to all three children and the parental rights of

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<sup>1</sup> The names of the children here are pseudonyms.

Respondent Father (“Father”) as to Leah only. Mother and Father separately appeal. We affirm all orders.

I. Background

In June 2020, Yancey County DSS became involved with the family of Mother and Father (collectively, “Parents”) based on their involvement in criminal activity. On 3 June 2020, Parents had participated in a controlled buy of marijuana from their home, supervised by the Yancey County Sheriff’s Office. In the family residence, deputies discovered the three minor children, as well as 790 grams of marijuana, methamphetamine residue, mushrooms, drug paraphernalia, and a firearm.

DSS was notified after both parents were arrested. DSS found little food in the house, “lots of items piled up”, the house in disarray, and evidence that the children needed dental care. Upon being interviewed, the children acknowledged that Parents used drugs, sold drugs from the home, allowed buyers into the home, and allowed those buyers to use drugs in the children’s presence. The oldest child, Leah, admitted that she helped her father grow marijuana, and THC (ingestion and exposure) was found in her system. The children were placed in the custody of DSS.

On 26 June 2020, after a hearing on the matter, the trial court adjudicated the children neglected and ordered that DSS retain custody over them. Over two years later, on 26-27 September 2022, the trial court held a hearing to consider whether to terminate Parents’ parental rights to their respective children. On 14 February 2023,

the trial court entered Orders terminating Parents' parental rights. Mother and Father separately appeal.

## II. 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, 832 S.E.2d 698, 700 (2019); *see also* N.C. Gen. Stat § 7B-1109(f). We review “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) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)).

At the disposition phase, we apply “the abuse of discretion standard when reviewing the trial court’s determination of whether terminating the parent’s rights is in the juvenile’s best interest under N.C.G.S. § 7B-1110(a).” *In re G.B.*, 377 N.C. 106, 119, 856 S.E.2d 510, 519 (2021) (citations omitted).

## III. Analysis

### A. Mother’s Appeal

Mother argues that the trial court erred in terminating her parental rights to her three children. She contends that the trial court erred by determining grounds for termination existed, namely, neglect and willful failure to make reasonable progress. She also contends that the trial court erred by overlooking evidence that Mother eliminated the likelihood of future neglect of the children by correcting the conditions that led to the children's removal from their home.

A neglected juvenile is one "whose parent . . . [d]oes not provide proper care, supervision, or discipline." N.C.G.S. § 7B-101(15) (2023). "[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).

When a child has been separated from their parent for a long period of time such that it cannot be shown that a parent is neglecting the child at the time of the termination hearing, the petitioner (or movant) must prove (1) prior neglect of the child by the parent and (2) a likelihood of future neglect if the child is returned to the parent. *See In re D.W.P.*, 373 N.C. 327, 339, 2020 N.C. LEXIS 87, \*22, 2020 WL 967615; *In re M.A.W.*, 370 N.C. 149, 152, 804 S.E.2d 513, 516 (2017).

We conclude there was sufficient evidence of neglect prior to the children's removal from Parents in June 2020. For instance, as found by the trial court, the evidence showed that controlled substances were being sold out of the home; DSS

found the home not to be safe, in disarray, and unkept; the children had knowledge of Mother's drug activities in the home; and Mother's admission that the children had been neglected.

To predict the probability of repetition of neglect, the court looks to the historical facts of the case to assess whether there is a substantial risk of future abuse or neglect. *See In re M.C.*, 374 N.C. 882, 889, 844 S.E.2d 564, 569 (2020); *In re M.P.M.*, 243 N.C. App. 41, 48, 776 S.E.2d 687, 692 (2015), (quoting *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999)), *aff'd per curiam*, 368 N.C. 704, 782 S.E.2d 510 (2016).

The trial court must consider (1) evidence of neglect prior to removal, including a prior adjudication of neglect, (2) evidence of changed circumstances since the prior adjudication, and (3) whether there is a likelihood of future neglect if the child is returned to the parent. *See In re A.E.*, 379 N.C. 177, 864 S.E.2d 487 (2021); *In re M.S.E.*, 378 N.C. 40, 48, 859 S.E.2d 196, 204–205 (2021); *In re M.A.W.*, 370 N.C. 149, 152–54, 804 S.E.2d 513, 516–17 (2017); *In re D.L.W.*, 368 N.C. 835, 841–43, 788 S.E.2d 162, 167–68 (2016); and *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227 (1984).

We conclude that the trial court made sufficient findings to show the probability of a repetition of neglect. For instance, the evidence showed that the children remained living outside Mother's home from the time of their removal in June 2020 up through the date of the termination hearing in September 2022. During

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that time, Mother resided at nine different homes or facilities; her employment was inconsistent; she failed to pay her child support obligations for twenty months; she continued to relapse into drug use, stating on one occasion that she did so to “sabotage her case; and she was not engaged in therapy for substance abuse or mental health treatment at the time of the termination hearing.

We note that Mother offered some evidence to explain some of her deficiencies. However, we have carefully reviewed the record and conclude that the unchallenged findings and the challenged findings supported by the evidence support the trial court’s conclusion that Mother had neglected her children. And we cannot say that the trial court abused its discretion by determining it to be in the children’s best interest that her parental rights be terminated.

B. Father’s Appeal

Father argues the trial court erred in terminating his parental rights to Leah. He challenges many of the findings and contends that the conclusions are not supported by adequate findings. He contends the findings and evidence did not show the likelihood of future neglect. Further, he contends the trial court’s factual findings fail to recognize that he complied with most of the case plan and made reasonable progress. He notes that his inability to substantially comply with the case plan was due to his incarceration and that he shows appropriate remorse for his actions.

Here, the evidence showed that Father was arrested in early June 2020 for drug-related charges, when the children were placed into DSS custody. He bonded

out of prison on 9 June 2020. Shortly thereafter, on 17 June 2020, Father agreed to and signed a DSS case plan, which contained a target date for completing it of 17 December 2020. The case plan identified requirements necessary for Parents to reunify with their children, which included components as to housing, employment, substance abuse assessments and treatment, drug screens, and maintaining sobriety. However, that same day, 17 June 2020, Father was arrested again for drug-related activities when a deputy stopped a vehicle in which Father was a backseat passenger. During a search of that vehicle, law enforcement found over 100 grams of marijuana in the backseat and methamphetamines on Father's person.

Father remained incarcerated through the date of the termination hearing in September 2022. At the time of that hearing, though, he had an expected release date in December 2022. However, he did not present evidence at the hearing that he had secured a residence or employment, nor did he present evidence regarding his ability to manage Leah if she was returned to his care and custody upon his release. Though the trial court acknowledged that Father participated in various programs while incarcerated, the court found that his progress concerning treatment had not been substantial.

This Court has consistently held that incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision. *See In re M.A.W.*, 370 N.C. at 153, 804 S.E.2d at 516–17. The trial court must look to other factors that implicate a likelihood of future neglect besides the parent's incarceration. It must

also consider a parent's incarceration when determining whether that parent has made reasonable progress, considering the circumstances, to correct the conditions that led to the child's removal. *See In re G.B.*, 377 N.C. at 113, 856 S.E.2d at 515; *In re A.J.P.*, 375 N.C. 516, 849 S.E.2d 839 (2020).

However, our Supreme Court has held that it is proper to take into consideration the willful acts of a parent after his children have been taken which might affect his ability to carry out a case plan. *See In re G.B.*, 377 N.C. at 115–16, 856 S.E.2d at 516–17. Here, the findings based on the evidence show that Father participated in illegal drug activities two weeks after his children had been removed to DSS custody, and on the same day after entering into a case plan, was arrested on another felony drug charge, which greatly hindered his ability to carry out that case plan.

The unchallenged findings and the challenged findings supported by the evidence support the trial court's conclusion that Father had neglected Leah. And we cannot say that the trial court abused its discretion by concluding that it was in Leah's best interest for Father's parental rights to be terminated.

AFFIRMED.

Judge STADING concurs.

Judge STROUD concurs in result only.

Report per Rule 30(e).