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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-861

Filed 2 April 2024

Robeson County, No. 19 JT 238

IN THE MATTER OF: B.L., Jr.

Appeal by respondent-mother from order entered 24 May 2023 by Judge Angelica C. McIntyre in Robeson County District Court. Heard in the Court of Appeals 21 February 2024.

J. Edward Yeager, Jr. for petitioner-appellee Robeson County DSS.

Peter Wood for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by Karen Lee Lander, for Guardian ad Litem.

THOMPSON, Judge.

Respondent-mother appeals the order terminating her parental rights to her minor son Blake.¹ Respondent-mother contends the court committed prejudicial error by (1) finding the ground of neglect when the court made no finding about the

¹ Pseudonyms or initials are used to protect the identity of the minor children throughout this opinion.

probability of future neglect; (2) finding the ground of willful failure to pay child support when petitioner had not proven that ground by clear, cogent, and convincing evidence; and (3) finding the ground of willfully leaving a child in foster care. After careful consideration of the issues discussed below, we affirm the order of the district court terminating respondent-mother's parental rights.

I. Factual Background and Procedural History

Robeson County Department of Social Services (DSS) has been involved with the family in the present case since 2010 due to domestic violence, medical neglect, and substance abuse. Blake was born to respondent-mother and B.L., Sr.² on 22 August 2017.

On 18 July 2019, a nonsecure custody order was entered placing Blake and his siblings, A.L. and D.L., in the custody of DSS based upon juvenile petitions alleging neglect as a result of the parents' substance abuse. The children were placed in foster care. DSS subsequently dismissed the petitions and Blake and D.L., were returned to respondent-mother's home while guardianship to a nonparent was ordered for A.L.

In August 2020, DSS received additional reports of respondent-mother's substance abuse. On 31 August 2020, DSS received a report that respondent-mother and D.L. were involved in a car accident, and that D.L. was not wearing a seatbelt at the time of the accident. The law enforcement officer who responded to the accident

² Initials are used to identify the father of Blake to further protect the identity of the juvenile in this matter.

reported that respondent-mother was charged with DWI, and respondent-mother later admitted that she was under the influence of a controlled substance at the time of the accident.³

Blake was sent to several temporary placements with relatives and friends following respondent-mother's car crash, while DSS tried to work with the parents to eliminate the need for Blake's placement. Respondent-mother and B.L., Sr. agreed to undergo substance abuse assessments and treatment, but DSS continued to receive reports that respondent-mother was still using illegal drugs. On 28 November 2020, B.L., Sr. overdosed. Blake, three years old at the time, was present in the home during his father's overdose, and stood by his father as EMS attempted to revive him. Respondent-mother was home at the time of the overdose but was under the influence and did not realize what was happening with B.L., Sr. B.L., Sr. was taken to the hospital and placed on life support and Blake's paternal grandmother took custody of Blake on 30 November 2020. On 8 December 2020, B.L., Sr. died.

On 14 December 2020, DSS filed a petition alleging respondent-mother had neglected Blake due to her continued substance abuse issues, and by nonsecure custody order entered that same day, Blake was placed in DSS custody. An adjudication hearing was held on 15 April 2021, and by order entered 11 June 2021, Blake and D.L. were adjudicated neglected by the district court for respondent-

³ Based on respondent-mother's admissions, she was under the influence of either "something like heroin, a line the size of my fingertip" or Xanax.

mother's failure to provide proper care, supervision, or discipline and because the juveniles lived in an injurious environment. The adjudication order incorporated the facts set forth in the 14 December 2020 petition as findings of fact, and the court found the "Adjudication Court Report . . . to be both credible and reliable." The court ordered reunification as the permanent plan, and respondent-mother entered into a Family Services Case Plan (case plan) wherein she was to address substance abuse and mental health issues, obtain employment, and was ordered by the court to submit to random drug screens. The court did not address visitation at that time. On 16 April 2021, respondent-mother signed off on and began her case plan, also beginning supervised visits with Blake for two hours biweekly at DSS as ordered by the district court.

A permanency planning hearing scheduled for 12 August 2021 was continued because DSS reported to the court that respondent-mother's psychological report reflected that respondent-mother had not yet addressed her substance abuse history. At the first permanency planning hearing held on 2 December 2021, DSS advised the court that respondent-mother had attended visitation with Blake but appeared to be under the influence during those visits. DSS also reported that respondent-mother completed a Substance Abuse Intensive Outpatient Program (SAIOP) in April of 2021, but she had tested positive for fentanyl in January and February of 2021. DSS was also attempting to collect child support from respondent-mother as of the 2 December 2021 hearing. By order entered 15 March 2022 pursuant to the December

2021 permanency planning hearing, the district court ordered reunification as the primary plan for the minor children, with a concurrent plan of adoption.

At the next permanency planning hearing held on 29 June 2022, DSS and the guardian ad litem reported to the court that respondent-mother was inconsistent with her substance abuse treatment and mental health services, that respondent-mother refused mouth-swab drug tests, and that respondent-mother had been inconsistent in attending visitation with Blake and his sibling. According to the Permanency Planning Hearing Report, respondent-mother had biweekly visitations with her children, Blake and D.L., but had missed the visits scheduled for 30 April 2021, 15 May 2021, 3 September 2021, and 17 September 2021. The guardian ad litem further noted that respondent-mother had made no effort to remove her children from DSS custody.

In the order entered 21 October 2022, pursuant to the 29 June 2022 hearing, the district court ordered DSS to begin the termination of parental rights process against respondent-mother, and DSS filed a termination of parental rights motion on 18 October 2022. The termination of parental rights motion alleged respondent-mother had neglected Blake within the meaning of N.C. Gen. Stat. § 7B-101(15); that she had willfully left the juvenile in foster care for more than twelve months without showing reasonable progress in correcting the conditions which led to Blake's removal from the home, to wit: she had failed to comply with her case plan; and for a continuous period of six months next preceding the filing of the motion for

termination of parental rights, respondent-mother had willfully failed to pay a reasonable portion of the cost of care for Blake although physically and financially able to do so.⁴

On 14 December 2022, the district court held another permanency planning hearing and entered an order which was subsequently filed on 7 March 2023. In the order, the court incorporated findings from DSS's 7 December 2022 report. DSS reported to the court that a child support order was in effect for respondent-mother requiring her to pay \$50 per month and an additional \$25 per month towards her total arrears of \$462.51; her last payment was made on 11 October 2022, although she was resubmitting the November 2022 payment because she had written down the wrong zip code. DSS further reported that on 5 October 2022, respondent-mother had admitted to not attending services with regard to her case plan; on 12 October, respondent-mother advised DSS she had stable housing, was working, and "ha[d]n't used in the last month or two"; and on 7 December 2022, respondent-mother told DSS she was still not attending services for her case plan, and if given a drug screen that day, she would test positive for fentanyl.

After being continued twice from its initial 15 December 2022 setting, the adjudicatory termination of parental rights hearing was held on 16 March 2023. At the hearing, a DSS social worker testified that during the twenty months in which

⁴ Respondent-mother reported to DSS on 5 October 2022 that she had obtained employment working the front desk at a Best Western Hotel and cleaning houses as a side job.

she had been working Blake's case, respondent-mother had attended ten months of mental health treatment in 2021 before she was discharged for noncompliance, and four months of substance abuse treatment. Another DSS social worker testified that she took on Blake's case on 27 September 2022, that respondent-mother did not attend mental health treatment during that time, and that respondent-mother made little to no effort to attend substance abuse treatment. Respondent-mother testified that she had used fentanyl as recently as four days before the hearing and that she also continued to use marijuana. The court also heard testimony from DSS that Blake had been in custody with his paternal grandmother, and that Blake was doing well. By order entered 24 May 2023, the district court found clear, cogent, and convincing evidence that termination of respondent-mother's parental rights was in Blake's best interest.

Respondent-mother timely filed notice of appeal on 30 May 2023.

II. Analysis

After careful consideration of respondent-mother's challenges to the district court's termination order in light of the record and the applicable law, we conclude that the district court's termination of parental rights order should be affirmed.

A. Standard of review

In conducting a termination of parental rights proceeding, the district court begins by determining whether any of the grounds for termination delineated in N.C. Gen. Stat. § 7B-1111(a) exist. *See* N.C. Gen. Stat. § 7B-1109(e)–(f) (2023). “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, 5–6, 832 S.E.2d 698, 700 (2019) (citation omitted). “If a [district] court finds one or more grounds to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a), it then proceeds to the dispositional stage,” *id.* at 6, 832 S.E.2d at 700, at which it “determine[s] whether terminating the parent’s rights is in the juvenile’s best interest” *Id.* (citation omitted).

We review a district court’s adjudication under N.C. Gen. Stat. § 7B-1111 to “determine whether the findings are supported by clear, cogent[,] and convincing evidence and the findings support the conclusions of law.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (citation omitted). “A [district] court’s finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding.” *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019) (citation omitted). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re M.T.*, 285 N.C. App. 305, 336, 877 S.E.2d 732, 753–54 (2022). “The issue of whether a [district] court’s adjudicatory findings of fact support its conclusion of law that grounds existed to terminate parental rights pursuant to [N.C. Gen. Stat.] § 7B-1111(a) is reviewed de novo by the appellate court.” *Id.* (citation omitted).

B. Probability of future neglect

Respondent-mother argues that the district court committed prejudicial error because “[t]he [district] court made no finding about the probability of future neglect.” We disagree.

Pursuant to N.C. Gen. Stat. § 7B-101(15), parental rights may be terminated when the district court “concludes the parent has neglected the juvenile within the meaning of [N.C. Gen. Stat.] § 7B-101.” *In re M.A.*, 378 N.C. 462, 466, 862 S.E.2d 169, 173 (2021). Under N.C. Gen. Stat. § 7B-101(15), “[a] neglected juvenile is one whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile’s welfare.” *Id.* (citation and internal quotation marks omitted). “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 a likelihood of future neglect by the parent.” *M.T.*, at 337, 877 S.E.2d at 754 (citation 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 omitted).

Respondent-mother argues that the district court “erred prejudicially by concluding Blake had been neglected” because the court did not “find a probability of

future neglect before finding the ground of neglect.”

In the order for termination of parental rights, the district court made the following findings of fact:

16. The minor child has been in the care of the Robeson County Department of Social Services for more than two years and the Respondent Mother’s substance abuse issues are still on going [sic]. She has been unable to provide a reasonably safe and adequate home for the minor child due to her substance use. *Therefore, there is a substantial risk of continued harm to the minor child.* (emphasis added)

. . . .

18. ... Because Respondent Mother refused to work a plan or receive continued treatment for her substance use to try and have the child placed back with her, *there is a high likelihood that the neglect would continue.* (emphasis added)

Here, in Findings of Fact 16 and 18, the determination that “there is a substantial risk of continued harm to the minor child” and the finding that “there is a high likelihood that the neglect would continue” are more properly classified as conclusions of law. *In re J.O.D.*, 374 N.C. 797, 807, 844 S.E.2d 570, 578 (2020). Findings of fact that are essentially conclusions of law will be treated as such on appeal. *Id.* (citation, internal quotation marks, brackets, and ellipsis omitted). Therefore, even though the district court in this case labeled Findings 16 and 18 as Findings of Fact, they are “more properly classified as conclusions of law,” and “will be treated as such on appeal[.]” *id.* (citation omitted), because they speak to the

district court's determination that neglect would likely reoccur if Blake were placed back with respondent-mother. Here, the district court made the following findings, which are unchallenged and therefore binding on appeal, that support the conclusion of law that "there is a high likelihood that neglect would continue[.]" including:

2. The minor child is currently in the legal and physical custody of the Robeson County Department of Social Services pursuant to a Non-Secure Custody Order entered to December 14, 2020.

....

5. The minor child was adjudicated a neglected child as defined in the statute 7B-101(15) pursuant to an Adjudication Order entered on April 15, 2021, based upon an injurious environment related to the substance abuse by the Respondent Mother.

....

7. ... Respondent Mother completed random drug screens between January of 2021 and June of 2021. During that time, she did have some negative drug screens. However, she was given a certificate of completion in April of 2021, even though she tested positive for fentanyl in January and February of that same year.

8. Respondent Mother stopped attending her services with Premier and due to noncompliance, she was discharged from that provider in October of 2021. Respondent Mother *admitted that she had a "problem" with fentanyl* in October of 2022, but *she did not engage in any services at that time*. Respondent Mother did attend Lumberton Treatment in December of 2022 for substance abuse treatment and submitted to a drug screen. Respondent Mother was positive for cocaine, THC, and fentanyl. Respondent Mother only attended for roughly a month. She was discharged January 31, 2023, for noncompliance.

(emphases added)

. . . .

11. Respondent Mother began receiving services for substance abuse on February 13, 2023, At that time Respondent Mother was positive for THC and MOG. In speaking with the provider, they indicated that MOG could possibly be from fentanyl use. *Respondent Mother did not return for treatment* (emphasis added)

. . . .

14. ... Respondent Mother admitted that she last used fentanyl on Sunday, March 12, 2023, and continues to use marijuana even though she has started Subutex.

15. [T]he *greatest issue[] that brought the minor child into the care of the Department is the Respondent Mother's substance abuse.* (emphasis added)

. . . .

20. That the Court takes judicial notice of the underlying Juvenile File, 19JA238 and the Department's efforts to work with the Respondent Mother and finds those efforts to be credible and reliable.

While we acknowledge that respondent-mother has made some progress—obtaining employment and attending some mental health and substance abuse services—her failure to complete her case plan regarding substance abuse treatment and the very prevalent substance addiction with which she continues to struggle show a likelihood of future neglect that mirrors the circumstances which led to Blake's removal and placement into DSS custody. Therefore, we hold that the district court's conclusions of law are supported by clear, cogent, and convincing evidence, and the

court did not commit prejudicial error in finding neglect as a ground for termination of respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Because the district court is only required to find one ground to terminate parental rights, we need not address respondent-mother's additional arguments on appeal pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) and (a)(3).

III. Conclusion

Based on our review and the analysis above, we conclude that the district court properly determined respondent-mother's parental rights could be terminated on the grounds of neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Furthermore, respondent-mother does not challenge the district court's dispositional determination that termination of her parental rights was in Blake's best interest.

Accordingly, we affirm the district court's order terminating respondent-mother's parental rights.

AFFIRMED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).