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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-972

Filed 4 June 2024

Wake County, Nos. 20 JT 174–75

IN THE MATTER OF: K.E.L., V.P.L.

Appeal by Respondent-Mother from order entered 19 July 2023 by Judge V. A. Davidian, III in Wake County District Court. Heard in the Court of Appeals 6 May 2024.

Senior Assistant Wake County Attorney Mary Boyce Wells, for Petitioner-Appellee Wake County Department of Health and Human Services.

Young Moore and Henderson P.A., by Reed J. Hollander and Brittany D. Levine, for Guardian ad Litem.

Robert W. Ewing for Respondent-Appellant Mother.

PER CURIAM.

On appeal, Respondent-Mother argues the trial court erred in concluding grounds existed to permit the termination of her parental rights to her minor children. For the reasons discussed below, we affirm the trial court’s order.

I. Factual Background and Procedural History

On 30 October 2020, Wake County Health and Human Services (“WCHHS”) became involved with “Kathy” and “Violet”¹ (collectively, the “juveniles”) after Respondent-Mother shot and killed the juveniles’ father in the family home. Violet was lying on a bed about two or three feet away from the chair where her father was seated when he was shot, and Kathy was in a crib immediately behind the chair. Respondent-Mother initially told law-enforcement officers who responded to her 911 call that she killed the father because he was sexually abusing Violet, although she changed her story in subsequent interviews. As a result of the shooting, Respondent-Mother was arrested and charged with first-degree murder. She remained incarcerated awaiting trial throughout the proceedings in this matter.

On 2 November 2020, WCHHS filed petitions alleging that Kathy and Violet were abused, neglected, and dependent juveniles and obtained nonsecure custody of the juveniles. On 9 April 2021, the trial court adjudicated Kathy and Violet as abused and neglected juveniles, and dismissed the dependency allegation. In its subsequent disposition order, the trial court continued temporary custody with WCHHS and established a permanent plan of reunification with Respondent-Mother. Respondent-Mother’s case plan required her to (1) comply with a psychological evaluation; (2) obtain and maintain legal income sufficient for herself and the juveniles; (3) obtain and maintain housing sufficient for herself and the juveniles; (4) complete a parenting

¹ Pseudonyms are used to protect the identity of the juveniles and for ease of reading. See N.C. R. App. P. 42(b).

education program; (5) complete a domestic-violence education program; (6) comply with all orders of the criminal court; and (7) maintain contact with WCHHS. Respondent-Mother appealed from the adjudication and disposition orders, and in an unpublished decision, this Court affirmed the orders after determining the trial court's findings of fact supported its conclusion of law that Kathy and Violet were neglected juveniles, without reaching the abuse issue. *See In re K.L.*, ___ N.C. App. ___, 873 S.E.2d 440 (2022) (unpublished).

On 1 December 2022, WCHHS filed a motion to terminate Respondent-Mother's parental rights to Kathy and Violet, alleging the statutory grounds of abuse, neglect, willful failure to make reasonable progress, failure to pay a reasonable portion of the cost of care, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), (6) (2023). At the termination hearing held on 20 April 2023, the primary witness during the adjudication portion was the WCHHS social worker assigned to the juveniles. She testified about the events that led to the juveniles' removal and their subsequent abuse and neglect adjudications—namely, Respondent-Mother's killing of the father in their immediate presence. The social worker also described Respondent-Mother's case plan and acknowledged because of her pending murder charge, that the only classes available to Respondent-Mother at the detention center were substance-abuse classes and a “possible” faith-based life-skills class. Meanwhile, services usually provided by Wake Technical Community College were not available for Respondent-Mother due to the murder charge; no parenting

education classes were offered at the detention center; and the psychologists employed by Wake County were unable to perform Respondent-Mother's psychological evaluation, due to COVID concerns and restrictions on interactions with Respondent-Mother.

The social worker next testified about Respondent-Mother's self-reported mental health and behavioral issues while incarcerated. Respondent-Mother told the social worker she was taking four medications to address anxiety and hallucinations at the start of the case, but within a year she reported taking only a single anti-anxiety medication. Respondent-Mother also stated that she was placed in lockdown after she began to take her clothes off in the detention center's exercise room and then refused the medication the staff attempted to give her. Respondent-Mother said she was placed in lockdown on another occasion when she stopped eating and sleeping after learning that Violet sometimes calls her paternal uncle—in whose home Kathy and Violet were residing in a kinship placement—"Daddy."

The social worker also described an incident during which Respondent-Mother violated a no-contact order prohibiting her from having any contact with Kathy and Violet.² During a visit between the juveniles and some of their maternal relatives on 13 April 2022, Respondent-Mother called the maternal relatives from the detention

² While there is no dispute Respondent-Mother was under a no-contact order, evidence in the record is inconsistent as to when the no contact order was entered. It appears it was entered on or about 31 October 2020 and remained in effect at time of the hearing on the motion to terminate parental rights.

center and spoke to Violet on the telephone. After the telephone call, Violet displayed an “empty” demeanor—appearing “very quiet, very withdrawn”—and later that night, started to pull out her hair. The hair-pulling behavior continued for some time. When the social worker later

talked to the mother about the phone call and how [Violet] was upset[,] . . . [respondent-]mother didn’t seem to be able to fully connect [the] phone call[], trauma, behavior, and how the different things that [Violet] had experienced right from the time that she witnessed her father being shot up [or to understand the child’s] behaviors could all be interconnected.

In addition, Respondent-Mother would not “acknowledge that [the] phone call may have not been the right thing for [Violet] at the time.” The social worker further testified that during a hearing in August 2022 where the unauthorized telephone call was addressed, Respondent-Mother alleged that the juveniles’ paternal relatives had abused Violet and caused “bruising.” But the allegation was reported and deemed to be unsubstantiated.

The paternal uncle also testified during the adjudication hearing. His testimony tended to show the following. The juveniles had been living with him and his wife since May 2021. Violet had been “struggling mentally from the beginning” of her time in his home. He emphasized her negative reaction to the telephone conversation with Respondent-Mother.

During the adjudication hearing, the trial court took “judicial notice of the underlying orders in the JA file,” including a permanency-planning order entered on

15 September 2022, about six months before the termination hearing. In that order, the trial court made a number of findings of fact related to Respondent-Mother's unauthorized telephone contact with Violet, including: Respondent-Mother and her relatives had repeatedly denied the call took place; when confronted with a detention center recording of the call at a permanency-planning hearing, Respondent-Mother claimed she did not know she was speaking to Violet; and she believed she was speaking with a niece, despite Violet calling Respondent-Mother "mommy" during the call. The trial court also found that Respondent-Mother "downplayed" the negative behavioral changes Violet exhibited after the call and failed to "display empathy regarding" the juveniles' circumstances. Instead, Respondent-Mother made uncorroborated accusations during the hearing that the paternal relatives had physically abused Violet, despite never having raised any such concerns with the social worker.

At the conclusion of the adjudication hearing, the trial court found the existence of several statutory grounds, including neglect. After a brief dispositional hearing, the trial court concluded that termination of Respondent-Mother's parental rights would be in Kathy's and Violet's best interests.

On 19 July 2023, the trial court found the existence of three adjudication grounds and concluded it was in the juveniles' best interests to terminate Respondent-Mother's parental rights. Respondent-Mother timely appealed.

II. Analysis

Respondent-Mother argues the trial court erred in concluding the statutory grounds of abuse, neglect, and failure to make reasonable progress existed. After careful review, we hold the trial court's conclusion concerning neglect is supported by adequate findings which were based on clear, cogent, and convincing evidence. Accordingly, we affirm the trial court's order.

A. Standard of review

A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence that one or more of the grounds for termination set out in N.C. [Gen. Stat.] § 7B-1111(a) exist. We review a . . . court's adjudication decision in order to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. An adjudication of any single ground in N.C.[Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.

In re A.C., 378 N.C. 377, 380, 861 S.E.2d 858, 865 (2021) (*purgandum*). “Findings of fact not challenged [on appeal] are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citations omitted). “Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights.” *Id.* at 407, 831 S.E.2d at 58–59 (citing *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982)).

B. Existence of the ground of neglect

Respondent-Mother contends, *inter alia*, that the trial court’s “conclusion of law that the . . . neglect ground[] existed to terminate [her] parental rights was not supported by sufficient evidence and findings of fact.” We disagree.

A ground to terminate parental rights exists where a parent has neglected her children “in such a way that the child[ren have] become . . . neglected juvenile[s] as that term is defined in N.C.[Gen. Stat.] § 7B-101.” *In re J.S.*, 377 N.C. 73, 78, 855 S.E.2d 487, 491 (2021) (citation omitted); N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is defined, in pertinent part, as a juvenile “whose parent ... [d]oes not provide proper care, supervision, or discipline” or “[c]reates or allows to be created a living environment injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15)(a), (e) (2023). “Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016) (citing *In re Ballard*, 311 N.C. 708, 713–15, 319 S.E.2d 227, 231–32 (1984)). Thus, where the children have

not been in the custody of the parent for a significant period of time prior to the termination hearing . . ., evidence of neglect by a parent prior to losing custody of [the children]—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights, but the . . . 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. After weighing this evidence, the court may find the neglect ground if it concludes the evidence demonstrates a likelihood of future neglect by the parent.

In re J.S., 377 N.C. at 78, 855 S.E.2d at 491–92 (citations and internal quotation marks omitted). “It is well established that when deciding whether future neglect is likely, [t]he 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*.” *In re Z.G.J.*, 378 N.C. 500, 509, 862 S.E.2d 180, 188 (2021) (citing *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 227).

Respondent-Mother’s central argument is that “incarceration standing alone is not sufficient to support a conclusion of law that [she] . . . neglected her children.” We agree that a parent’s “incarceration, by itself, cannot serve as clear, cogent, and convincing evidence of neglect. Instead, the extent to which a parent’s incarceration . . . support[s] a finding of neglect depends upon an analysis of the relevant facts and circumstances, including the length of the parent’s incarceration.” *In re K.N.*, 373 N.C. 274, 283, 837 S.E.2d 861, 867–68 (2020). “Incarceration . . . is neither a sword nor a shield in a termination of parental rights decision,” but rather one circumstance that can be considered—along with prior adjudications of neglect, whether a respondent-parent has been “forthcoming with” the social-services department and “compliant with [court] directives,” and other relevant matters. *In re M.A.W.*, 370 N.C. 149, 153–55, 804 S.E.2d 513, 517–18 (2017) (citing *In re P.L.P.*, 173 N.C. App. 1, 10, 618 S.E.2d 241, 247 (2005)) (internal quotation marks omitted).

In support of her argument that the ground of neglect was not shown, Respondent-Mother first asserts that clear, cogent, and convincing evidence did not

support findings of fact 26—that she “only occasionally asked about the children’s wellbeing during her contact with the social worker”—and 29—that “[a]ny actions or inactions she makes to not work her case plan . . . is her willful choice.” As to her degree of interest in the children’s wellbeing, Respondent-Mother emphasizes that she “was prevented from providing gifts, letters or other items for the children due to her incarceration and the no-contact order” and that the social worker testified that Respondent-Mother expressed sadness about not being able to be with her children and inquired “about when she might be able to see them.” As to Respondent-Mother’s efforts under her case plan, she notes that due to her incarceration and the nature of her pending first-degree murder charges, any failure to comply with her case plan cannot be said to be willful. But we need not consider Respondent-Mother’s challenge to those findings as they are not necessary to sustain the trial court’s conclusion concerning neglect. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59 (“[W]e review only those findings necessary to support the . . . court’s determination that grounds existed to terminate respondent’s parental rights.”).

Here, the trial court’s conclusion that Kathy and Violet would likely be neglected if they were returned to Respondent-Mother’s care is supported by the order’s unchallenged, and therefore binding, findings of fact. *See id.* at 407, 831 S.E.2d at 58 (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). In addition to finding that the juveniles were adjudicated neglected as a result of Respondent-Mother “killing the children’s father in their presence,” the trial

court also found that Respondent-Mother (1) is receiving medication “to address hallucinations and anxiety”; (2) “was placed on lockdown at the jail at least twice due to her erratic behavior,” an instance which occurred after Respondent-Mother admitted she stopped taking her medication; (3) spoke at length with Violet by telephone, violating a no-contact order of which Respondent-Mother was aware; (4) “lied and attempted to shift blame[]” regarding the “unauthorized contact” with Violet; (5) failed to “apologize for or acknowledge her negative impact on the children” and showed “no concern for the effects on” them, including Violet’s deterioration following the telephone call; (6) made allegations of abuse by the juveniles’ paternal relatives which the trial court found not credible and without “care that the children could have been subjected to unnecessary questioning and/or intrusive physical examinations” as a result; (7) “demonstrates very little insight on how her actions have affected the children”; and (8) “continued to make decisions that negatively impacted the children.” In light of these evidentiary findings, the trial court made an ultimate finding that “[t]here is a likelihood of repetition of neglect if the child[ren were] returned to [respondent-]mother’s care” because she lacks insight into the harm she caused the juveniles and “has made choices not to be concerned for their care and treatment.”

These unchallenged findings demonstrate an ongoing pattern of Respondent-Mother’s destructive decision making at the juveniles’ expense, without the apparent ability or desire to anticipate the consequences of her actions, acknowledge the

resulting harm to her children, or express regret about the trauma she has caused them. Moreover, this pattern extends from at least the time the juveniles came into WCHHS custody and up through the date of the termination hearing. We hold that these findings regarding Respondent-Mother's prior neglect of the juveniles, combined with her ongoing failure to make choices in the best interests of her children, support the trial court's determination of a likelihood of future neglect and thus the existence of that ground. *See In re J.S.*, 377 N.C. at 78, 855 S.E.2d at 491–92. Because the adjudication of any one statutory ground is sufficient to support a termination of parental rights, *In re A.C.*, 378 N.C. at 380, 861 S.E.2d at 865, we do not address Respondent-Mother's arguments challenging the remaining grounds adjudicated by the trial court.

III. Conclusion

The trial court's adjudication of neglect is supported by its unchallenged findings of fact. Respondent-Mother does not challenge the trial court's determination that termination was in her children's best interests. Accordingly, we affirm the trial court's order terminating Respondent-Mother's parental rights as to Violet and Kathy.

AFFIRMED.

Panel consisting of:
Judges ZACHARY, CARPENTER, THOMPSON.

Report per Rule 30(e).