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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-83

Filed 1 October 2024

Burke County, No. 21 JT 84

IN RE: I.W., Minor Child.

Appeal by respondent-father from order entered 28 September 2023 by Judge Robert Mullinax in Burke County District Court. Heard in the Court of Appeals 28 August 2024.

Amanda C. Perez for petitioner-appellee Burke County Department of Social Services.

David A. Perez for respondent-appellant father.

Alston & Bird LLP, by Matthew P. McGuire, for Guardian ad Litem.

DILLON, Chief Judge.

Respondent-father is the father of I.W. (“Iliana”).¹ He appeals from the order terminating his parental rights. We affirm.

Background

On 15 June 2021, Iliana entered the care of the Department of Social Services

¹ A pseudonym.

(“DSS”) pursuant to a nonsecure custody order. On 30 September 2021, Iliana was adjudicated to be neglected.

Father was incarcerated for domestic violence convictions that he committed against Iliana’s mother at the time that DSS took custody of Iliana. On 21 July 2021, after DSS took custody, he entered a case plan with DSS while he was still incarcerated. He was not released from prison until 16 April 2022, after which time he was on post-supervision release until January of 2023. He was not allowed to have contact with Iliana during his post-supervision release period.

Father’s termination hearing was held 15 September 2023. Father was not present. Following the hearing, the trial court entered an order terminating Father’s parental rights to Iliana on three statutory grounds pursuant to N.C.G.S § 7B-1111(a)(1), (2), and (7), including neglect.

II. Analysis

On appeal, Father argues that the court erred in terminating his parental rights based on each of the three grounds relied upon by the trial court.

We must affirm the trial court’s termination order if we conclude that any one ground relied upon by the trial court is supported. *See In re J.S.*, 374 N.C. 811, 815 (2020). We review to determine whether the *challenged* findings of fact are supported by clear and convincing evidence and whether the unchallenged findings and the supported challenged findings support the conclusions of law. *See In re T.H.T.*, 185

N.C. App. 337, 343 (2007).

Here, the trial court determined that Father had neglected Iliana. The trial court may terminate the parental rights of a parent upon a finding that the parent has neglected a juvenile. *See* N.C.G.S. § 7B-1111(a)(1) (2024). If the parent has been separated from the child for a significant period of time, the court must find that there has been a past showing of neglect and a likelihood of future neglect. *See In re J.M.J.-J.*, 374 N.C. 553, 556 (2020). The court looks to the historical facts of the case to predict the probability of a repetition of future neglect. *See In re M.C.*, 374 N.C. 882, 889 (2020). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.S.E.*, 378 N.C. 40, 48 (2021).

We conclude that there is substantial evidence to support the trial court’s findings concerning Father’s neglect of Iliana. The trial court found, and there is evidence showing, that after his release from prison, Father failed to maintain sobriety, did not cooperate with drug screenings, and was hospitalized as a result of an attempted overdose. Father did not stay in contact with the assigned social worker to keep DSS informed, and he did not provide proof of housing or employment. In fact, he was absent from the termination hearing. During Father’s incarceration, he spent a lengthy time in solitary confinement due to violent behavior. Furthermore, in the results of a parenting capacity evaluation that Father completed, the evaluator found that there was “no indication that Father had developed any insight into his

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anger and aggression or developed any coping strategies that would mitigate his risk for violence and aggression in the future.” He continued to blame Iliana’s mother for his assaults against her.

Father challenges four findings on appeal, namely Findings 31 and 35 as being unsupported by the evidence and Findings 37 and 65 as being erroneous. We disagree. We have reviewed the record and conclude that the trial court did not err in making these findings. As to Finding 65, which states, “The Respondent Parents have not made efforts to establish or maintain their parental bonds with the minor children[,]” Father argues that this finding is erroneous as to him, since during much of the relevant time, he was incarcerated and his contact with Iliana was limited or prohibited. Our Supreme Court has instructed that the fact of a parent’s incarceration is neither a sword nor a shield for purposes of a termination of parental rights proceeding. *See In re A.G.D.*, 374 N.C. 317, 327 (2020). Although Father’s ability to maintain contact with Iliana was inhibited somewhat by his incarceration, there were findings apart from the fact of his incarceration to support the trial court’s finding regarding his limited efforts in maintaining the contact he could have enjoyed with his daughter.

Lastly, Father contests Conclusion of Law 5, that Father has neglected Iliana and that there is a high probability that he would continue to do so, as unsupported by proper findings of fact. We disagree. The trial court’s findings concerning Father

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are sufficient to support its determination that there is a high probability that Father would continue to neglect Iliana.

Based on our review of the record, we conclude that the unchallenged findings and challenged findings supported by the evidence support the trial court's conclusion that Father neglected Iliana. And, furthermore, we cannot say that the trial court abused its discretion by determining that it was in Iliana's best interest for Father's parental rights to be terminated. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).