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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-3

Filed 15 October 2024

Mecklenburg County, No. 20 JT 193

IN THE MATTER OF: K.G.

Appeal by Respondent-Mother from order entered 9 August 2023 by Judge Aretha V. Blake in Mecklenburg County District Court. Heard in the Court of Appeals 6 September 2024.

Mecklenburg County Attorney's Office, by Senior Associate Attorney Kristina A. Graham, for petitioner-appellee Mecklenburg County Youth and Family Services.

Elon University Guardian ad Litem Appellate Advocacy Clinic, by Senior Associate Dean Alan D. Woodlief, Jr., for guardian ad litem.

Jeffrey William Gillette for respondent-appellant mother.

STADING, Judge.

Respondent-mother ("Mother") appeals from the trial court's order terminating her parental rights to K.G. ("Kenneth").¹ Since the trial court's findings of fact supported its determination that Mother's parental rights were subject to termination due to neglect, we affirm the termination order.

¹ Pseudonyms are used to protect the juvenile's identity.

I. Background

On 2 April 2020, Mecklenburg County Youth and Family Services (“YFS”) received two reports following an incident of domestic violence between Mother and Kenneth’s father (“Father”).² On 1 April 2020, Father had threatened Mother with a knife and strangled her with a belt until she was unconscious. The Charlotte-Mecklenburg Police Department responded to the incident, observed the marks on Mother’s neck, and arrested Father for assault with a deadly weapon and felony assault by strangulation.

During the 2 April 2020 investigation, YFS learned of prior incidents of domestic violence, including two previous incidents of Father strangling Mother until she was unconscious. The most recent of these prior incidents occurred in January 2020 and led to Mother seeking medical treatment, though she did not file charges against Father. Mother stated she would obtain a domestic violence protective order (“DVPO”) against Father.

Father was released from jail on 7 April 2020. Mother picked him up upon his release, and Father listed her address on his bond paperwork. YFS had difficulty contacting Mother after Father’s release, but a home visit was eventually scheduled for 15 April 2020. Contrary to Mother’s assertion that she had no contact with Father, he was at her home before the arrival of YFS, leaving ten minutes before the

² The trial court’s order also terminated Father’s parental rights. However, Father did not appeal.

social worker arrived. Father called her while the social worker was at the home and said he could “see [she was] busy.” Neither parent was receptive to the social worker’s recommendation that they use a temporary safety provider, and Father refused to engage in domestic violence counseling and denied there were any domestic violence issues. Mother had also failed to obtain a DVPO. Accordingly, YFS obtained nonsecure custody and filed a juvenile petition on 20 April 2020, alleging that Kenneth was a neglected juvenile, in that he was not receiving proper care and supervision and lived in an injurious environment.

The matter came on for adjudication and disposition on 16 June 2020. On 19 August 2020, the trial court entered an order adjudicating Kenneth as a neglected and dependent juvenile. The trial court ordered continued custody with YFS and provided Mother with weekly one-hour supervised in-person visitation and daily virtual or phone visitation.

At the first review hearing on 8 September 2020, the trial court praised Mother for “jumping right in with participating in services.” The trial court found that she had started therapy and domestic violence services, and she was on track to complete parenting classes within a month. Mother had been active with visitation, attending medical appointments, and collaborating with the foster parents. The trial court identified the most significant concern as Father not participating in recommended services or engaging with YFS and ordered Mother to cease all contact with Father.

The trial court continued custody with YFS and set the primary plan to reunification with a secondary plan of adoption.

At the 1 March 2021 permanency planning hearing, Father testified that he had failed to engage in any recommended services because he did not want to do so or to be bothered with YFS. In the resulting 8 March 2021 order, the trial court found that Father's continued contact with Mother, while failing "to address the severe and significant" domestic violence against her, was a barrier to reunification. However, the trial court found that Mother could reunify with Kenneth within six months if Father was "out of the picture." The trial court continued the order of no contact between Mother and Father, ordered Mother to engage in a trauma assessment, and provided for one of Mother's weekly visits to be unsupervised following the creation of a safety plan.

In the 8 October 2021 permanency planning order, the trial court found that Mother and Father had been in contact. Father was using Mother's address for his mail and as his location for his probation officer, and Father testified that he and Mother were tired of sneaking around and wanted to be friends and co-parent. While Mother had "done substantially everything asked," her unwillingness to remove Father from her life remained a barrier to her reunification with Kenneth. The trial court continued the order of no contact between the parents. The trial court also ordered a child and family team meeting "to determine the barriers to" Mother separating from Father and "to explore" the additional supports she needed to

eliminate all contact. Mother was allowed to continue unsupervised visitation, but YFS had the discretion to remove unsupervised visitation if there was communication between the parents.

Following the permanency planning hearing that concluded in March 2022, the trial court adopted the transition plan of YFS and provided for YFS to initiate a trial home placement with Mother. Kenneth was placed into Mother's care in May 2022, but on 17 June 2022, YFS filed a motion to review the trial home placement. In the motion, YFS detailed evidence of Father residing or visiting with Mother.

At the hearing on 5 July 2022, Father testified that he found Mother's address online and obtained keys to her apartment from her uncle. Father stated he had been to the apartment three or four times without Mother's permission. On 1 July 2022, the police were dispatched to the apartment due to a domestic dispute between the parents. Father admitted to keeping track of Mother's whereabouts and to filing a missing person report in an attempt to use law enforcement to keep apprised of her location. The trial court did not terminate the trial home placement but ordered Mother to cease contact with her uncle and immediately call 911 if she believed Father was at her apartment. The trial court ordered YFS to assist Mother with security measures, including having the locks changed and facilitating contact with Safe Alliance, a domestic violence victim assistance program, to evaluate whether she should seek a DVPO.

By the 13 July 2022 permanency planning hearing, Mother had yet to change her locks or seek assistance. In its subsequent order, the trial court found that Kenneth was not in a safe or appropriate placement with Mother and suspended the trial placement.

In the 20 December 2022 permanency planning order, the trial court found that while Mother had “[o]n paper . . . seemingly met her case plan goals, . . . her lack of communication, mistrust of YFS, and misdirected animosity towards YFS” prevented the court from obtaining “relevant, reliable, or necessary evidence to support” such a determination. Mother refused to provide YFS with her new address, provide any evidence of employment or income, or sign a release for YFS to obtain proof of her compliance with domestic violence services. The trial court further found that Mother was evasive, failed to acknowledge Father’s role in Kenneth’s removal, and believed that the real problem in her case was calling the police when domestic violence occurred. Mother had drastically cut back on visitation, having not engaged in in-person visitation and having participated in only two FaceTime calls since the last permanency planning hearing. Based on the parents’ failures to make adequate progress, the trial court changed the primary permanent plan to adoption and the secondary plan to guardianship and directed YFS to petition to terminate parental rights.

YFS petitioned to terminate Mother’s parental rights on 20 December 2022, alleging grounds under N.C. Gen. Stat. § 7B-1111(a)(1)–(3), (6) (2023). The matter

came on for hearing on 31 May 2023 and 30 June 2023. On 9 August 2023, the trial court entered an order adjudicating the existence of all grounds as alleged in the petition and concluding that termination of Mother's parental rights was in Kenneth's best interests. Mother timely appealed.

II. Jurisdiction

This Court has jurisdiction to consider this appeal under N.C. Gen. Stat. §§ 7B-27(b) and 7B-1001(a)(7) (2023).

III. Analysis

Mother first argues that this Court should disregard most of the trial court's findings of fact to the extent they were based on prior permanency planning hearings, as those hearings were dispositional in nature and failed to reflect the circumstances at the time of the termination hearing. She then challenges the adjudication of all four grounds for termination, contending that the evidence provided at the hearing did not support the trial court's adjudication.

A. Sufficiency of the Findings of Fact

Mother contends that "[o]ver half of the district court's evidentiary findings," findings of fact 5 through 25, "are comprised of quotations or summaries of prior review and permanency planning orders." She argues that "[a]lthough the court purported to make such dispositional findings 'based on clear, cogent, and convincing evidence,' such was an incorrect statement of the evidentiary standard and should be ignored by this Court."

It appears that Mother is arguing the trial court erroneously stated the standard of proof as clear, cogent, and convincing evidence in its permanency planning and review orders. While a trial court's findings of fact in a permanency planning order "need only be supported by sufficient competent evidence[.]" any alleged errors in the permanency planning orders in this case are irrelevant. *In re L.M.T.*, 367 N.C. 165, 180, 752 S.E.2d 453, 462 (2013). Mother has only appealed from the order terminating her parental rights, so these orders are not before us for review.

Moreover, to the extent that Mother takes exception to the trial court incorporating findings from prior orders, her argument lacks merit. Presuming, *arguendo*, the trial court did rely on the lower standard of proof at the earlier hearings and just erroneously stated the higher burden in its orders, it was not error for the trial court to incorporate those findings into the termination order. Trial courts are authorized to "take judicial notice of findings of fact made in prior orders, even when those findings are based on a lower evidentiary standard because where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence." *In re B.J.H.*, 378 N.C. 524, 546, 862 S.E.2d 784, 801 (2021) (quoting *In re J.M.J.-J.*, 374 N.C. 553, 558, 843 S.E.2d 94, 100 (2020)). In turn, these prior findings are "sufficient to support an adjudicatory finding of fact" in termination proceedings. *Id.* At the start of the termination hearing, the trial court took judicial notice of the orders entered in the underlying

juvenile matter without any objection by Mother. Accordingly, Mother's arguments are overruled, and we will consider findings of fact 5 through 25 in our review of the trial court's adjudication.

B. Adjudication of Neglect

A neglected juvenile is one whose parent “[d]oes not provide proper care, supervision, or discipline[,]” or “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2023). To terminate parental rights based on this ground where a “child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016). In predicting the likelihood of future neglect, the trial court “must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re Z.V.A.*, 373 N.C. 207, 212, 835 S.E.2d 425, 430 (2019) (citing *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). “The 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*.” *Id.* (quoting *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018) (citation omitted).

This Court reviews an 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 and internal quotation marks omitted). “Unchallenged findings of fact made at the adjudicatory stage are binding on appeal.” *In re Z.V.A.*, 373 N.C. at 211, 835 S.E.2d at 429 (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

Mother contends that the trial court erred in determining there was a likelihood of future neglect “in spite of” her testimony that she had moved away to cut contact with Father and that she was not in contact with him at the time of the termination hearing. She also argues that there was no evidence the domestic violence in the home affected Kenneth insofar as to render him a neglected juvenile.

Mother does not challenge the prior adjudication of neglect, which was based on the serious allegations of domestic violence perpetrated by Father. Besides her meritless general objection to the validity of the trial court’s findings regarding prior hearings, Mother does not challenge the substance of the trial court’s findings detailing her failure to address the issue of domestic violence adequately. These findings trace the trial court’s insistence, from the very beginning, that Mother “untether herself” from Father and that failure to resolve the domestic violence issues would bar reunification. Mother did not abide by the no-contact order and failed to remain transparent with YFS and the trial court regarding Father’s attempts to maintain control and power over her. While Mother reported Father for trespassing

on 1 July 2022, the trial court found “a lack of clarity as to the exact events of that date.” Despite a clear plan to create a safe living environment for Kenneth, Mother did not take any steps over two weeks to change her locks or access any resource YFS offered to assist her.

Once Kenneth was removed from the trial placement with Mother, her progress continued to devolve, with her failing to provide YFS with necessary information about her housing and employment. She also did not exhibit any meaningful application of her prior domestic violence services, refusing to acknowledge how her choices and Father’s actions had led to Kenneth’s removal. Even at the termination hearing, Mother continued to express her unfounded belief that Kenneth was removed from the trial placement because she called the police on 1 July 2022. At the May 2023 permanency planning hearing, Father disclosed an encounter in March 2022 that led to Mother becoming pregnant. Mother had never reported any contact at that time and actively hid that information from YFS, the juvenile court, her domestic violence assessor, and at her DVPO hearing. At the termination hearing, Mother still refused to categorize that incident as coercive, though she admitted she did not engage willingly, and that Father had manipulated her into meeting up and engaging in intercourse.

Mother also does not challenge the trial court’s findings that she failed to engage in therapeutic services between May 2022 and February 2023 or that she had unstable housing after moving to Winston-Salem in the fall of 2022. Instead, she

contends the trial court improperly ignored her testimony regarding her move. At the termination hearing, Mother testified that she moved to Winston-Salem “as a way to break any type of barrier or ties with” Father so that she could reunify with Kenneth. She contends this testimony, “if believed, significantly undercut[s]” the trial court’s determination. However, it is clear the trial court did consider Mother’s testimony and did not find it credible. The trial court found that Mother was not open and honest in disclosing her contact with Father in 2022 and that her move, in addition to her lack of in-person visitation with Kenneth between July 2022 and February 2023, was an effort to continue concealing her resulting pregnancy. Thus, Mother’s argument lacks merit.

Similarly, we reject Mother’s contention that the trial court erred in terminating her parental rights for neglect when there were no findings that Kenneth was affected by domestic violence in the home. Our Supreme Court has held that properly supported findings detailing a parent’s “failure to adequately address the issue of domestic violence . . . are, standing alone, sufficient to support a determination that there was a likelihood of future neglect in the event that the children were returned to the [parent’s] care.” *In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020). As detailed above, Mother’s continued failure to recognize and address the underlying issues of domestic violence supports the trial court’s determination that there was a likelihood of a repetition of neglect if Kenneth were placed back into Mother’s care.

IV. Conclusion

The trial court properly concluded that grounds existed to terminate Mother's parental rights to Kenneth for neglect under N.C. Gen. Stat. § 7B-1111(a)(1). Given that the existence of a single ground for termination suffices to support the termination of parental rights and Mother has not challenged the trial court's best interests determination, we affirm the trial court's termination order.

AFFIRMED.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).