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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-70

Filed 15 October 2024

Mitchell County, No. 19JT42

IN THE MATTER OF: H.K.S.

Appeal by respondent-father from order entered 26 October 2023 by Judge Rebecca Eggers-Gryder in Mitchell County District Court. Heard in the Court of Appeals 6 September 2024.

*Daniel M. Hockaday, for petitioner-appellee Mitchell County Department of Social Services.*

*Michelle FormyDuval Lynch, for guardian ad litem.*

*Garron T. Michael, for respondent-appellant father.*

FLOOD, Judge.

Respondent-Father appeals from the trial court's order terminating his parental rights to H.K.S. ("Hunter")<sup>1</sup> entered on 26 October 2023 following a remand of the matter from this Court, as directed in *In re H.K.S.*, No. COA22-289, 2023 WL 3835130 (N.C. Ct. App. June 6, 2023) (per curiam) (unpublished) (hereinafter "*In re*

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<sup>1</sup> A pseudonym is used to protect the juvenile's identity, pursuant to N.C.R. App. P. 42(b).

*H.K.S. I*).<sup>2</sup> Upon review, because the trial court’s adjudication of neglect is based on clear, cogent, and convincing evidence, we affirm the trial court’s termination of Respondent-Father’s parental rights.

### **I. Factual and Procedural Background**

In July 2019, Hunter was removed from Respondent-Father’s residence due to concerns by Mitchell County Department of Social Services (“DSS”) of substance abuse, and placed in the home of his paternal grandparents, pursuant to a safety agreement. On 14 August 2019, DSS filed a juvenile petition alleging Hunter to be an abused, neglected, and dependent juvenile. The allegations giving rise to the juvenile petition are set forth in *In re H.K.S. I*.

On 23 September 2019, the trial court heard DSS’s petition and adjudicated Hunter a neglected and dependent juvenile by an adjudication/interim disposition order entered on 7 November 2019. By disposition order entered on 21 November 2019, the trial court awarded DSS legal custody of Hunter and directed that he remain in placement outside of Respondent-Father’s home. The trial court decreed that, if Respondent-Father sought reunification with Hunter, he must enter into a DSS case plan. The trial court also directed that Respondent-Father have no visitation until such time as he “received at least two consecutive negative drug screens[.]”

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<sup>2</sup> Respondent-Mother is not a party to the appeal.

During a permanency planning hearing conducted on 3 January 2020, the trial court observed that Respondent-Father had made no progress in seeking reunification with Hunter, appeared to have substantial substance abuse and emotional issues, and had made no progress in addressing those issues. By order entered 7 February 2020, the trial court set Hunter's permanent plan as adoption with a concurrent plan of reunification. In a permanency planning order entered on 27 April 2021, the trial court directed DSS to cease reunification efforts between Hunter and Respondent-Father, while Respondent-Father remained incarcerated. Respondent-Father had been incarcerated since 14 February 2020, he was serving an active sentence of thirty to forty-eight months, and his projected release date was no earlier than August 2022.

In a permanency planning order entered on 30 August 2021, the trial court changed Hunter's permanent plan to adoption with a concurrent plan of guardianship, and directed DSS to file a petition to terminate Respondent-Father's parental rights in Hunter.

DSS filed a petition on 9 September 2021 to terminate Respondent-Father's parental rights, alleging neglect, under N.C. Gen. Stat. § 7B-1111(a)(1), and a failure to legitimate Hunter, under N.C. Gen. Stat. § 7B-1111(a)(5). The trial court concluded the alleged grounds existed and that it was in Hunter's best interests to terminate Respondent-Father's parental rights. Respondent-Father's parental rights in Hunter were terminated by an order entered on 14 December 2021, and

Respondent-Father appealed to this Court.

By a decision filed on 6 June 2023, this Court held that the trial court’s findings of fact were insufficient to support the adjudication of grounds to terminate Respondent-Father’s parental rights. *See In re H.K.S. I*, 2023 WL 3835130, at \*1. This Court found, however, that “the record contains evidence that potentially could support terminating Respondent[-Father]’s parental rights for neglect[,]” pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *Id.* at \*6. The trial court’s 14 December 2021 order terminating Respondent-Father’s parental rights was vacated and remanded for further proceedings, “including the entry of a new order containing appropriate findings of fact and conclusions of law.” *Id.*

On remand, the trial court conducted a hearing on 17 October 2023. The trial court incorporated the findings of fact set forth in the 14 December 2021 order by reference and made additional findings of fact based on the existing record. The trial court again adjudicated the existence of neglect as a ground to terminate Respondent-Father’s parental rights in Hunter, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Noting that Respondent-Father had not challenged the trial court’s previous finding that termination of parental rights was in Hunter’s best interests, the trial court terminated Respondent-Father’s parental rights in Hunter by order entered on 26 October 2023. Respondent-Father timely appeals.

## **II. Jurisdiction**

This Court has jurisdiction to review the termination of Respondent-Father’s

parental rights, pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

### **III. Standard of Review**

“A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage.” *In re D.C.*, 378 N.C. 556, 559, 862 S.E.2d 614, 616 (2021) (referencing N.C. Gen. Stat. §§ 7B-1109, -1110 (2019)). “We review a trial court’s adjudication to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *Id.* at 559, 862 S.E.2d at 616 (citation and internal quotation marks omitted). “Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal.” *In re J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 71 (2020) (citation and internal quotation marks omitted). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re K.B.*, 378 N.C. 601, 607, 862 S.E.2d 663, 670 (2021) (citation omitted). At the dispositional stage, “the court must consider whether it is in the best interests of the juvenile to terminate parental rights.” *In re D.C.*, 378 N.C. at 559, 862 S.E.2d at 616 (citation omitted).

### **IV. Analysis**

Respondent-Father challenges the trial court’s adjudication of neglect as unsupported by the findings of fact. Respondent-Father argues the trial court failed to properly consider how his incarceration impacted his ability to comply with his case plan and that the trial court disproportionately relied on the period before Respondent-Father was arrested. Respondent-Father challenges Finding of Fact 20,

in which the trial court found Respondent-Father had “limited services available to him during the time he was incarcerated[,]” but does not specify which services were available. He contends the trial court’s failure to identify the services available to him “prevents this Honorable Court from being able to reasonably review [his] progress during this time.”

Respondent-Father further argues that the Record contains limited evidence about the availability of services while he was incarcerated. Respondent-Father does not challenge the trial court’s findings of fact for lack of evidentiary support. Rather, he contends that where there was insufficient evidence to determine what services related to his case plan were available to him, his lack of participation in services cannot be held against him. Respondent-Father argues that nothing in the findings of fact resolves the issue of what services were available. We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), a court may terminate parental rights upon finding that a parent “has abused or neglected the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(1) (2023). The definition of a neglected juvenile includes 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). “[I]f the 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). “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, 859 S.E.2d 196, 205 (2021) (citation omitted); *see also In re N.B.*, 377 N.C. 349, 360, 856 S.E.2d 828, 838 (2021) (“[R]espondent’s compliance with a portion of her case plan does not preclude a finding of neglect.” (citation and internal quotation marks omitted) (cleaned up)).

“Incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision.” *In re G.B.*, 377 N.C. 106, 117, 856 S.E.2d 510, 518 (2021) (citation omitted). “[T]he extent to which a parent’s incarceration or violation of the terms and conditions of probation support 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).

In the review of the 14 December 2021 order in *In re H.K.S. I*, this Court observed that Respondent-Father “d[id] not challenge the trial court’s finding of past neglect.” *In re H.K.S. I*, 2023 WL 3835130, at \*3; *see also In re T.M.*, 180 N.C. App. 539, 544, 638 S.E.2d 236, 239 (2006) (holding an appellant’s failure to challenge a conclusion “constitutes an acceptance of the conclusion and a waiver of the right to challenge said conclusion as unsupported by the facts” (citation omitted)). Respondent-Father, instead, challenged the finding of a likelihood of future neglect, as determined in Finding of Fact 12. *In re H.K.S. I*, 2023 WL 3835130, at \*3. This Court upheld portions of Finding of Fact 12:

[E]xcept for two visits with Hunter, Respondent[-Father]

did not contact DSS in the five or six months between the time Hunter was removed from the home and Respondent[-Father]'s arrest and [Respondent-Father] "refused" to cooperate with DSS during that same period; Respondent[-Father] had been incarcerated for the majority of the case and would be released no earlier than August 2022; Respondent[-Father] signed a case plan; Respondent[-Father]'s "progress has been limited while he was incarcerated;" and DSS had been relieved of efforts to reunify Respondent[-Father] and Hunter.

*Id.* at \*4.

This Court, however, observed that the trial court's 14 December 2021 order "fail[ed] to establish the degree to which Respondent[-Father] did not comply with his case plan and d[id] not show consideration of how Respondent[-Father]'s incarceration impacted his ability to comply with the plan"; "fail[ed] to identify what the case plan required or how Respondent[-Father]'s compliance with the plan was needed to remediate the conditions that led to Hunter's removal"; and failed "to explain what efforts Respondent[-Father] has, or has not, actually made in achieving [his 'limited' progress." *Id.* The Record evidence, however, "potentially could support terminating Respondent[-Father]'s parental rights for neglect." *Id.* at \*6.

Following remand, the trial court incorporated the findings of fact set forth in its 14 December 2021 order into its 26 October 2023 order terminating Respondent-Father's parental rights, based on neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).



The trial court also made the following, unchallenged findings of fact, which are binding on appeal. *See In re J.S.*, 374 N.C. at 814, 845 S.E.2d at 71. Hunter was removed from Respondent-Father's care in July 2019 due to concerns of substance abuse, as Respondent-Father was using methamphetamines and tested positive for amphetamines and THC. Respondent-Father entered into an initial case plan with DSS that same month. After Hunter was adjudicated a neglected juvenile, Respondent-Father entered into a second case plan with DSS in October 2019 addressing issues of parenting, employment, housing, and substance abuse treatment, and directing Respondent-Father to submit to requested drug screens.

The trial court further found that Respondent-Father did not participate in any substance abuse treatment and made no progress in his case plan between July 2019 and February 2020, when he was arrested on charges involving controlled substances. During the fourteen to fifteen months Respondent-Father was held in a county jail following his 14 February 2020 arrest, he "had limited services available[.]" and "[t]he [trial court] . . . considered those circumstances[.]" but noted that Respondent-Father had not "participate[d] in any services . . . to address the case plan requirements."

Following Hunter's removal from Respondent-Father's home, Respondent-Father visited Hunter only twice between July and September 2019 and not at all following September 2019. Respondent-Father also did not maintain contact with the social worker to inquire about Hunter's status or how he could address the

requirements of his case plan. After nineteen months, DSS was relieved in March 2021 of providing reasonable efforts to reunify Respondent-Father with Hunter.

The trial court also found that “beginning in July, 2021, [Respondent-Father] began participating in a substance abuse treatment program offered through the North Carolina Department of Adult Corrections[,]” and at the time of the termination of parental rights hearing, he had participated for four months of the twelve-month program. This four-month participation in a substance abuse program was “[t]he only progress [Respondent-Father] had made on the DSS case plan at the time of the TPR hearing[.]” Hunter had been “continuously in DSS custody for a period of twenty-eight [] months. [Respondent-Father] had not completed any [other] portion of the DSS case plan[.]”

Based on these findings, the trial court determined there existed a likelihood of future neglect. We agree.

The findings of fact identify the issues Respondent-Father’s October 2019 case plan sought to address, including “[t]he requirements most relevant to the circumstances leading to the removal of the juvenile from [Respondent-Father’s] home”—parenting, employment, housing, and substance abuse treatment—and that he failed to make any progress on his case plan until enrolling in a substance abuse treatment program in July 2021. Respondent-Father argues that his lack of progress during the fourteen- to fifteen-month detention in the county jail cannot reasonably

support a determination that he failed to make progress because the trial court failed to identify the services available to him.

The trial court found, however, that though Respondent-Father had “limited services available to him” during his detention, “[R]espondent-[Father] did not participate in any services[.]” Respondent-Father’s failure to participate in any services where limited access was available shows a failure to make progress. Respondent-Father entered into a twelve-month substance abuse treatment program in July 2021, nineteen months after agreeing to the October 2019 case plan with DSS. At the time of the termination of parental rights hearing in November 2021, Respondent-Father’s four-month participation in the substance abuse program was the only progress made on his case plan, and “[Respondent-Father] had not completed any [other] portion of the DSS case plan[.]”

Additionally, Respondent-Father failed to provide Hunter with attention. Respondent-Father visited Hunter twice between July and September 2019, but did not visit him afterwards, prior to Respondent-Father’s incarceration in February 2020. At the time of the termination of parental rights hearing, Hunter had been in DSS custody for twenty-eight months. Respondent-Father also did not contact the social worker to inquire about Hunter.

Based on these findings of fact, we agree with the determination that there exists a likelihood of future neglect, and Respondent-Father does not challenge the determination of past neglect. *See In re H.K.S. I*, 2023 WL 3835130, at \*3; *In re*

*D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167; *In re M.S.E.*, 378 N.C. at 48, 859 S.E.2d at 205. Because there exists a likelihood of future neglect, this determination supports the trial court's termination of parental rights based on neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *See In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167. Accordingly, because the trial court's adjudication of neglect is supported by clear, cogent, and convincing evidence, and Respondent-Father does not challenge the determination that termination of his parental rights is in Hunter's best interests, we affirm the trial court's order terminating Respondent-Father's parental rights. *See In re D.C.*, 378 N.C. at 559, 862 S.E.2d at 616; *see also* N.C. Gen. Stat. § 7B-1110 (2023) (providing the criteria for the determination of the best interests of the child).

### **V. Conclusion**

Upon review, we conclude the trial court's adjudication of neglect is supported by clear, cogent, and convincing evidence. Accordingly, we affirm the trial court's 26 October 2023 order terminating Respondent-Father's parental rights in Hunter.

AFFIRMED.

Judges STROUD and STADING concur.

Report per Rule 30(e).