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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1039

Filed 15 January 2025

Guilford County, Nos. 16JT499, 16JT500

IN THE MATTER OF:

P.G.

K.S.G.

Appeal by respondent-mother from order entered 3 August 2023 by Judge Ashley Watlington-Simms in Guilford County District Court. Heard in the Court of Appeals 2 April 2024.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Hooks Law, P.C., by Laura G. Hooks, for respondent-mother-appellant.

Lenore Livingston Law, PLLC, by Lenore Livingston, Guardian ad Litem, for respondent-guardians-appellees.

GORE, Judge.

Respondent-mother appeals the termination of her parental rights of Paxton and Kaden.¹ Respondent-mother argues the trial court erred by finding grounds for

¹ Pseudonyms are used to protect the identity of the individuals.

termination exist pursuant to sections 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6). Respondent-mother further argues the trial court abused its discretion by determining termination of her parental rights was in the best interests of the children without any evidence from the Guardian ad Litem (“GAL”). Respondent-father’s parental rights were also terminated, but he did not seek appeal and is not subject to this appeal. Upon review of the briefs and the record, we affirm.

I.

Paxton and Kaden were taken into DHHS custody following reports of neglect due to respondent-mother’s substance abuse. Respondent-mother was arrested for outstanding warrants and drug possession. DHHS filed petitions for neglect and dependency and obtained nonsecure custody of the children. Respondent-father was also incarcerated at the time the children were taken into DHHS non-secure custody. The children were adjudicated neglected due to an injurious environment and dependent for lack of adequate care and supervision and a lack of appropriate alternative childcare by the adjudication order filed on 20 September 2019. The children remained in foster care and under DHHS legal and physical custody.

Respondent-mother was incarcerated from April 2019 to June 2019, again from August 2019 until 29 January 2020, and again from August 2021 until April 2023. DHHS and respondent-mother agreed to incarceration case plans and post-incarceration case plans. The barriers to the original plan of reunification included: substance abuse, lack of stable housing, not completing a parenting/psychological

assessment, incarceration, and concerns of domestic violence between the parents. In July 2021, the trial court changed the primary permanent plan to adoption with a secondary concurrent plan for reunification because respondent-mother was not in compliance with her case plan, she lacked stable housing, she had no financial support for her children, and was noncompliant with drug screens. The trial court stated that the case had been ongoing for 747 days and respondent-mother had made “minimal progress” with her case plan.

Previously, respondent-mother had a visitation plan of supervised visits, but she missed eighteen of the thirty-seven scheduled visits. The trial court suspended visitation with respondent-mother when it changed the primary permanent plan to adoption. Respondent-mother was arrested for 21 different charges, including possession of heroin and DWI, and was incarcerated from August 2021 until April 2023. Respondent-mother also received multiple infractions while incarcerated that included substance abuse infractions.

After respondent-mother’s arrest in August 2021 for drug charges, DHHS filed a petition for termination of parental rights. The termination hearing occurred on 2 May 2023. At the time of the hearing, respondent-mother had been out of prison for approximately one month and was living in a sober living community, Oxford House, was enrolled with UNC Horizons for substance abuse treatment, and obtained employment at a Subway. The trial court entered an order terminating respondent-mother’s parental rights after concluding grounds existed for termination pursuant

to sections 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6), and that it was in the best interests of the children pursuant to section 7B-1110(a). Respondent-mother filed a timely notice of appeal.

II.

Respondent-mother appeals of right pursuant to N.C.G.S. § 7B-1001(a)(7). Respondent-mother argues the trial court erred by determining there are grounds for termination. Within her challenge to the grounds for termination, respondent-mother asserts the following findings of fact are not supported by clear, cogent, and convincing evidence: 12, 13, 14, 17, 18, 25, 48, 50, 52, 53, 55, 57, 58, 58(b), 58(c), and 60. Respondent-mother also argues the trial court abused its discretion by determining it was in the best interest of the children to terminate her parental rights without evidence from the GAL.

We review the adjudicatory stage and disposition stage through different standards of review. For issues rising from the adjudicatory stage, we review the trial court's determination of grounds for termination by considering whether the findings of fact "are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re C.B.C.*, 373 N.C. 16, 19 (2019) (citation omitted). We review conclusions of law de novo. *Id.* Unchallenged findings of fact "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019). When considering the disposition stage, we review the trial court's determination of whether it was in the best interest of the children

to terminate parental rights for abuse of discretion. *In re D.L.W.*, 368 N.C. 835, 842 (2016).

A.

Respondent-mother argues the trial court improperly determined a ground for termination pursuant to N.C.G.S. § 7B-1111(a)(1) for neglect, because the evidence was lacking to support a finding of a likelihood of future neglect. We disagree.

Section 7B-1111(a)(1) permits termination of the parental rights if the trial court finds the parents neglected the children. N.C.G.S. § 7B-1111(a)(1) (2023). The juvenile is “deemed . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of” N.C.G.S. § 7B-101(15). *Id.* Section 7B-101(15) includes the following two definitions of neglect among others: “[d]oes not provide proper care, supervision or discipline,” and “[c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C.G.S. § 7B-101(15)(a), (e) (2023).

Generally, termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing. However, in instances where 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. In such cases, a trial court may terminate parental rights based upon prior neglect of the juvenile if the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to his or her parents.

...

A trial court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing. Likewise, a trial court may consider whether the parent has

made any meaningful progress in eliminating the conditions that led to the removal of the children. When these factors evidence a likelihood of repetition of neglect, the trial court may reach a conclusion of neglect under N.C.G.S. § 7B-1111(a)(1). . . . After noting these factors, the trial court must then distinctly determine a parent’s likelihood of neglecting a child in the future. . . . When the trial court fails to distinctly determine there is a likelihood of future neglect, the ground of neglect is unsupported by necessary findings of fact.

In re M.B., 382 N.C. 82, 86–87 (2022) (cleaned up).

In the present case, Paxton and Kaden were adjudicated neglected and dependent. The conditions triggering the placement with DHHS and adjudication included substance abuse and lack of an “appropriate care plan.” At the time the children were removed from respondent-mother’s care, respondent-mother lacked housing, she was driving under the influence and started falling asleep while children were riding in the back of the vehicle, and DHHS already had an extensive history with her due to reports filed against her in 2015, 2016, 2018 and this report in 2019. Respondent-mother was arrested at the time of this incident in April 2019.

After respondent-mother’s incarceration from April 2019 to June 2019, she was once again incarcerated in August 2019, and again in August 2021. Some of these sentences were a result of convictions of heroin possession, and DWI. While incarcerated during April 2019, respondent-mother entered into an “incarceration case plan” that required her to take any available online parenting classes in the jail, to maintain correspondence with DHHS regarding her children, to participate in substance abuse treatment, to refrain from using illegal substances, to not receive

infractions during incarceration, and to contact DHHS within 24 hours of her release. DHHS stated respondent-mother's barriers to achieving the permanent plan of reunification were: respondent-mother's substance abuse, domestic violence between respondent-mother and respondent-father; lack of a parenting psychological assessment; incarceration; and not completing a specified parenting course. Once out of prison, respondent-mother agreed to a case plan with DHHS that included: a substance abuse assessment, compliance with all substance abuse recommendations, and participation in random drug screens.

According to DHHS, beyond the substance abuse assessment, respondent-mother did not follow the recommendations from the assessment. Respondent-mother challenges the portions of finding of fact 12 discussing her non-compliance with the case plan. However, there is testimony to the contrary on the record by DHHS: testimony that respondent-mother did not complete the specified parenting course, PATE; and an order in the record specifying the various infractions respondent-mother received during incarceration. Respondent-mother did not submit more than two drug screens despite multiple requests from DHHS. Some of respondent-mother's multiple infractions while incarcerated involved substance abuse. Respondent-mother only began substance abuse treatment, apart from some classes in prison, once she was released in 2023 while staying at the Oxford House. Respondent-mother missed multiple supervised visits with the children prior to their suspension in 2021. Respondent-mother has not maintained stable housing suitable

for the children for “a minimum of six consecutive months.” Further, during the life span of this case, respondent-mother had a domestic violence incident with the respondent-father.

Although respondent-mother highlights her partial compliance with the case plan, this compliance is overshadowed by the limited time frame she was out of prison with this new case plan prior to the hearing. She failed to fully comply with multiple case plans both while incarcerated and during the brief periods of time she was not incarcerated in the four-year life span of this case. Accordingly, the portions of finding of fact 12 that we discuss are supported by competent evidence. *See In re A.R.A.*, 373 N.C. 190, 195 (2019) (“[W]e limit our review of challenged findings to those that are necessary to support the district court’s determination that this ground . . . existed in order to terminate her parental rights.”).

Respondent-mother argues the final portions of findings of fact 13 and 14 are unsupported by the evidence. These findings discuss her noncompliance with her case plan to obtain substance abuse services and her noncompliance with drug screens as part of her case plan. However, there is evidence in the record to support these findings. There are prior orders on the record stating she was not in compliance with her case plan to complete substance abuse services and DHHS testimony at the hearing of her noncompliance with the required drug screenings. Accordingly, these findings are supported by competent evidence.

Respondent-mother's failure to rectify the very issues that caused the children's removal demonstrates the likelihood of future neglect should the children be returned to her care. DHHS has been working with respondent-mother for four years and there is still not appropriate housing, there have been multiple substance abuse issues during the life span of the case, and respondent-mother has still not completed the specified parenting course or substance abuse treatment. The trial court included findings of fact demonstrating the prior and current neglect. Additionally, the trial court included findings to demonstrate a likelihood of future neglect and "ma[de] the necessary and distinct determination of a likelihood of future neglect." *In re M.B.*, 382 N.C. at 87. Respondent-mother states finding of fact 57 is unsupported but does not provide further argument as to why it is unsupported. This argument is a broadside attack and is abandoned.

Accordingly, the trial court did not err by determining a ground for termination existed under section 7B-1111(a)(1) for neglect. Because we determine there was sufficient evidence to support a ground for termination under section 7B-1111(a)(1) and only one ground for termination is necessary to proceed to the disposition stage in a termination proceeding, we do not consider the other arguments challenging the additional grounds for termination. *See In re R.L.D.*, 375 N.C. 838, 845 (2020).

B.

Respondent-mother also argues the trial court abused its discretion by determining it was in the children's best interest to terminate her parental rights

without hearing evidence from the GAL. Under N.C.G.S. § 7B-1110(a), the trial court must include findings on the six listed factors by utilizing evidence the trial court finds is “relevant, reliable, and necessary to determine the best interests of the juvenile[s].” N.C.G.S. § 7B-1110(a) (2023). A GAL must be appointed when there are allegations for abuse or neglect in juvenile abuse/neglect/dependency petitions. N.C.G.S. § 7B-601(a) (2023). Attorney advocates are appointed to support the GAL and give legal advice when the GAL is not an attorney. *Id.*

Respondent-mother relies on *In re R.A.H.* to support her contention the trial court abused its discretion. 171 N.C. App. 427 (2005). However, *In re R.A.H.* differs from the present case, because in *In re R.A.H.*, the facts show no GAL was appointed until days into the termination hearing. *Id.* at 431.

In the present case, respondent-mother admits both the GAL supervisor and the GAL attorney were present at the termination hearing. Additionally, the GAL’s brief before this Court points to the multiple places within the termination hearing transcript where the GAL attorney made arguments before the trial court, cross-examined witnesses, and concurred with DHHS’s attorney that it was in the best interests of the juveniles to terminate the parental rights. This evidence within the record contradicts respondent-mother’s claim that “the court never heard from or received any evidence from the GAL.”

Further, the record demonstrates the GAL and the GAL attorney were present at all hearings. It can be inferred they participated in some manner because of the

court orders throughout the record. Based upon the record, we cannot agree with respondent-mother's claims the GAL provided no evidence and did not fulfill their duties. The trial court did not abuse its discretion when it determined it was in the best interests of the children to terminate respondent-mother's parental rights.

Respondent-mother raises an alternative argument that the trial court abused its discretion by finding the juveniles' likelihood of adoption is high. We disagree. The trial court included finding of fact 1(b) within the disposition stage of the termination hearing that stated the "likelihood of adoption is high given the juveniles' age." Yet, instead of demonstrating a lack of evidence to support the finding, respondent-mother gives alternative evidence that the juveniles are not in a pre-adoptive home, that they have a history of behavioral issues, and that they fight. Respondent-mother also concedes that pre-adoptive placement is not a prerequisite to find the likelihood of adoption. *See In re L.G.G.*, 379 N.C. 258, 274 (2021). Respondent-mother does not challenge the portion of the finding stating their age supports their likelihood of adoption. The trial court recognized and discussed that the children were not in a pre-adoptive home and had moved more than once. Also, respondent-mother did not challenge the trial court's finding that the juveniles are doing well in their current therapeutic foster home and that they are hitting developmental milestones. Evidence supports the trial court's finding that the likelihood of adoption is high due to their age. The trial court did not abuse its discretion by finding the likelihood of adoption was high.

III.

Based upon the foregoing reasons, we conclude the trial court did not err when it determined there was a ground for termination of parental rights under section 7B-1111(a)(1) for neglect, and the trial court did not abuse its discretion by determining it was in the best interests of the juveniles to terminate respondent-mother's parental rights.

AFFIRMED.

Judge TYSON concurs.

Judge STROUD concurs in result only.

Report per Rule 30(e).