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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-554

Filed 5 February 2025

Sampson County, Nos. 18 JT 29-30

IN RE: Z.C.H, K.D.A., Minor Juveniles

Appeal by respondent-mother from orders entered 25 March 2024 by Judge James W. Bateman, III, in Sampson County District Court. Heard in the Court of Appeals 14 January 2025.

*Miller & Audino, LLP, by Jeffrey L. Miller, for respondent-appellant mother.*

*Reece & Reece, by Mary McCullers Reece, for petitioner-appellee Sampson County Department of Social Services.*

*N.C. Administrative Office of the Courts, by Michelle FormyDuval Lynch, for the Guardian ad Litem.*

DILLON, Chief Judge.

Respondent-mother (“Mother”) is the mother of minor children Z.C.H. (“Zane”) and K.D.A. (“Kim”).<sup>1</sup> Mother appeals from the orders terminating her parental rights to Zane and Kim. We affirm.

I. Background

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<sup>1</sup> Pseudonyms used for the minor children’s privacy and ease of reading.

In March 2018, the Sampson County Department of Social Services (“DSS”) filed petitions alleging Zane and Kim were neglected and dependent juveniles based on domestic violence and substance abuse in the home. The trial court granted nonsecure custody of the children to DSS. Later that year, the trial court adjudicated the children neglected and dependent. Mother entered into a case plan with DSS and had supervised visitation with the children. In April 2022, DSS filed motions to terminate parental rights.

Following hearings on the matter, the trial court adjudicated Zane and Kim to be neglected juveniles and determined that it was in their best interest to terminate Mother’s parental rights.<sup>2</sup> Accordingly, the trial court entered orders terminating Mother’s parental rights to Zane and Kim. Mother appeals.<sup>3</sup>

## II. Analysis

Mother does not appeal the trial court’s determination that termination of her parental rights was in the best interest of the children. Mother only appeals the trial court’s adjudication of Zane and Kim as neglected juveniles. Specifically, Mother argues the evidence was insufficient to support the trial court’s findings of fact and the findings of fact were insufficient to support the conclusion that the children were neglected juveniles.

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<sup>2</sup> The trial court dismissed the motion for termination of parental rights regarding Zane and Kim’s younger sibling, W.A.H.

<sup>3</sup> Zane’s father’s parental rights were also terminated. He did not appeal. Both Kim’s unknown father and her putative father’s parental rights were terminated. They did not appeal.

On appeal, our Court “reviews 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.” *In re K.S.*, 380 N.C. 60, 64 (2022) (cleaned up). “The issue of whether a trial court’s findings of fact support its conclusions of law is reviewed de novo.” *In re J.S.*, 374 N.C. 811, 814 (2020).

We have reviewed Mother’s challenged findings of fact and conclude that—aside from two findings regarding Mother’s use of profanity with DSS and Mother being escorted out of the building during a DSS meeting<sup>4</sup>—the findings are supported by clear, cogent, and convincing evidence. *See In re Montgomery*, 311 N.C. 101, 110–11 (1984) (“[O]ur appellate courts are bound by the trial courts’ findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.”). *See also Koufman v. Koufman*, 330 N.C. 93, 97 (1991) (“Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.”).

We now review the trial court’s neglect adjudication. Our General Statutes allow the trial court to terminate parental rights if the parent has neglected the juvenile. *See* N.C.G.S. § 7B-1111(a)(1). For example, a neglected juvenile is one whose parent “[d]oes not provide proper care, supervision, or discipline[,]” or “[h]as abandoned the juvenile[,]” or “[c]reates or allows to be created a living environment

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<sup>4</sup> Based on evidence in the transcript (and conceded by DSS in its brief), both findings inaccurately refer to Mother, when they should refer to Mother’s boyfriend (Zane’s father).

that is injurious to the juvenile's welfare." *See* N.C.G.S. §§ 7B-101(15)(a), (b), (e).

When a child is not in the parent's custody at the time of the termination hearing, there must be a showing of likelihood of future neglect. *See In re R.L.D.*, 375 N.C. 838, 841 (2020). "When determining whether such future neglect is likely, 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 (2019).

Here, the trial court determined there was a high probability of repetition of neglect if the children were returned to Mother's care. The trial court's findings support this conclusion. Mother's circumstances have not changed appreciably, as she has not resolved her problems with substance abuse and remains in a relationship with a man who is a registered sex offender and with whom she has a history of domestic abuse. Notably, the trial court found that "participation in her [case plan] has not changed or altered [Mother]'s behavior in an appreciable way." *See In re J.J.H.*, 376 N.C. 161, 185 (2020) ("[A] parent's compliance with his or her case plan does not preclude a finding of neglect."). *See also In re Y.Y.E.T.*, 205 N.C. App. 120, 131 (2010) (explaining that the "case plan is not just a check list" and that "parents must demonstrate acknowledgement and understanding of why the juvenile entered DSS custody as well as changed behaviors."). Moreover, the trial court found that Mother continues "to make poor choices" and "use illegal drugs despite years of services."

We note Mother's contention that the trial court was precluded from considering evidence presented at previous hearings because it failed to take judicial notice of prior orders and reports from the previous hearings. However, it is apparent from a review of the record and transcript that the trial court took judicial notice. *See In re M.N.C.*, 176 N.C. App. 114, 120–21 (2006) (noting that “the better practice would be to explicitly give all parties notice by announcing in open court that it is taking judicial notice of the matters contained in the court file[,]” but stating that the trial court is not required to expressly state that it is taking judicial notice of earlier proceedings in the same case). Moreover, the trial court properly heard oral testimony from multiple witnesses and made an independent determination. *See In re T.N.H.*, 372 N.C. 403, 410 (2019) (“[T]he trial court may not rely solely on prior court orders and reports but must receive some oral testimony at the hearing and make an independent determination regarding the evidence presented.”).

### III. Conclusion

We affirm the orders terminating Mother's parental rights to Zane and Kim.

**AFFIRMED.**

Judges WOOD and MURRY concur.

Report per Rule 30(e).