NO. COA09-423

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

IN THE MATTER OF:
C.S., F.C., Z.C. and B.C.

Randolph County
Nos. 05 JA 103-06

Appeal by respondent-mother from orders entered 23 January 2009 by Judge Michael A. Sabiston in Randolph County District Court. Heard in the Court of Appeals 10 August 2009.

Erica Glass, for petitioner-appellee, Randolph County Department of Social Services.

Joyce L. Terres, for respondent-appellant.

Andrew S. Hiller, for the Guardian ad Litem.

CALABRIA, Judge.

Respondent-mother ("respondent") appeals from the orders entered 23 January 2009 terminating her parental rights to her four children: five-year-old C.S.[1], nine-year-old F.C., eleven-year-old Z.C., and fourteen-year-old B.C. (collectively "the children"). The children's fathers' parental rights were also terminated, however, neither of the fathers are parties to this appeal. We affirm.

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[1] Initials are used throughout to protect the identity of the minor children.

On 18 April 2005, the Randolph County Department of Social Services ("RCDSS") filed juvenile petitions alleging that C.S., F.C., Z.C., and B.C. were neglected and dependent juveniles. The petitions alleged that the children did not receive proper care, supervision, or discipline from respondent and that the children lived in an environment injurious to their welfare. In support of these claims, RCDSS alleged, *inter alia*, that the children were allowed to roam in the apartment complex and street unsupervised, that F.C. had burned herself with a cigarette lighter, and that respondent failed to seek proper medical attention for the burn. The petition further alleged that respondent lacked stable income and failed to follow through with a number of services for the children. At the time of the petition, respondent had been recently evicted from her housing arrangement and had moved in with her parents. However, RCDSS alleged that, despite the move, the children were still not adequately supervised. In nonsecure custody orders entered 20 April 2005, the trial court gave custody of the children to RCDSS and they were placed in foster homes. Custody with RCDSS was continued several times pursuant to subsequent custody orders.

On 31 January 2006, the trial court adjudicated the children neglected based on respondent's failure to provide proper care and supervision. The trial court found as fact the following: (1) respondent allowed the children to roam in the street, and her attempts to prevent this were ineffectual; (2) Z.C. had climbed a tree, the height of which concerned social workers, and respondent

was unable to stop Z.C.'s inappropriate behavior; (3) F.C. was burned by an automobile cigarette lighter and respondent failed to seek medical attention for F.C. until a social worker intervened; (4) respondent was evicted from subsidized housing due to her failure to complete a monthly community service obligation; (5) after respondent moved in with her parents, the children were still not adequately supervised, and respondent continued to live with her parents; (6) respondent failed to follow through with several services for the children, including Medicaid, food stamps, the Work First assistance program, and the WIC ("Women, Infants, and Children") supplemental nutritional program; and (7) respondent was unemployed and lacked stable housing. Neither of the children's fathers[2] were able to provide appropriate care and supervision for the children. As a result, the trial court continued custody of the children with RCDSS. Respondent was allowed supervised visitation with the children. Additionally, respondent was ordered to obtain and maintain stable housing and employment, continue with vocational rehabilitation, and comply with all recommendations of her individual therapy.

At a review hearing conducted on 2 March 2006, the trial court ceased reunification efforts with all parents on the grounds that reunification would be futile or inconsistent with the children's safety and the need for a safe, permanent home within a reasonable

[2] Respondent's ex-husband is the father of F.C., Z.C., and B.C., but C.S. has a different father.

amount of time. On 30 March 2006, at the permanency planning hearing, the trial court changed the permanent plan to adoption.

On 17 and 19 September 2007, RCDSS filed petitions to terminate respondent's parental rights to C.S., F.C., Z.C., and B.C. RCDSS also sought to terminate the parental rights of the children's fathers. RCDSS alleged the following grounds for termination: (1) neglect, and (2) willfully leaving the children in foster care for more than twelve months without showing reasonable progress to correct the conditions that led to removal.

The trial court conducted termination hearings on 7 May 2008, 25 June 2008, 10 September 2008, 19 November 2008 and 5 December 2008. Following the hearings, the trial court entered four separate orders on 23 January 2009 finding that grounds existed to terminate the parental rights of respondent and the children's fathers as alleged by RCDSS. At disposition, the trial court concluded that it was in the best interests of the children to terminate the parental rights of respondent and the children's fathers. Respondent gave timely notice of appeal from the orders.

Pursuant to N.C. Gen. Stat. § 7B-1111(a) (2007), a trial court may terminate parental rights upon a finding of one of the ten enumerated grounds for termination. On appeal, we review the trial court's orders to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur." *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395 (1996) (citation omitted). "So long as

the findings of fact support a conclusion [that one of the enumerated grounds exists], the order terminating parental rights must be affirmed." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (internal citation omitted).

The trial court concluded that termination of respondent's parental rights was justified based on the following grounds: (1) neglect, and (2) willfully leaving the children in foster care for more than twelve months without showing reasonable progress to correct the conditions that led to removal. As the trial court's findings of fact support termination on the ground of neglect, the trial court's orders terminating respondent's parental rights should be affirmed.

N.C. Gen. Stat. § 7B-1111 provides, in pertinent part:

> (a) The court may terminate the parental rights upon a finding of one or more of the following:
>
> > (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be . . . neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101.

N.C. Gen. Stat. § 7B-1111(a)(1) (2007). The Juvenile Code defines a neglected juvenile as follows:

> Neglected juvenile. — A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2007).

When a child has not been in the custody of the parent for a significant amount of time prior to the termination hearing, as is the case here, "the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citing *In re Pierce*, 146 N.C. App. 641, 651, 554 S.E.2d 25, 31 (2001)). "[A] prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984)). This is because where the child has not been in the custody of the parent, requiring the petitioner to show that the child is currently neglected by the parent would make termination of parental rights almost impossible. *Id.* (citing *In re Ballard*, 311 N.C. at 714, 319 S.E.2d at 232). However, "the trial court must also consider evidence of changed conditions." *In re Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407. The trial court may then "find that grounds for termination exist upon a showing of a 'history of neglect by the parent and the probability of a repetition of neglect.'" *In re L.O.K.*, 174 N.C. App. at 435, 621 S.E.2d at 242 (2005) (quoting *In re Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407).

The following findings of fact[3] support this ground:

> 4. . . . The minor [children] [were] adjudicated to be [] neglected [children] at a hearing held on or about December 22, 2005.
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> 9.A.1. The Mother has failed to maintain stable and appropriate housing. At this time, the Mother lives in the home with the maternal grandparents, and she was living in the home with the maternal grandparents when the minor [children] [were] removed from the Mother's custody. A home study of the maternal grandparents' home was denied, and [RCDSS] did not consider the maternal grandparents' home to be an appropriate home for the minor [children].
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> 9.A.2. The Mother is incapable of parenting the minor [children]. The Mother submitted to a psychological evaluation on June 7, 2005 that was conducted by Dr. Chris Sheaffer. Dr. Sheaffer concluded that the Mother's intellectual and academic functioning are below the 1st percentile and reflect very poor ability to incorporate new information and to use cognitive coping skills. The Mother's intellectual[] ability falls within the mental retardation range and she is significantly below average functioning. The Mother is marginally capable of taking care of

[3] The trial court entered four separate orders terminating respondent's parental rights to C.S., F.C., Z.C., and B.C. The four orders are nearly identical in substance, with any major differences being attributed to the differences between the four children and the fact that C.S. has a different father than the other three children. All findings pertinent to this opinion are identical in substance in all four orders, but the numbering differs slightly. Unless otherwise indicated, our references to the findings of fact include the identical findings in all four orders. The numbering cited relates to the order terminating respondent's parental rights to C.S.

> herself but not able to care for high-needs children without help. The Mother does not have an active understanding of how to care for the minor [children]. The Mother is unable to maintain support for her and others. The Mother has significant deficiencies in the cognitive process which renders her unable to make the cognitive connections required to parent small children especially [those with the problems that her children have].
>
> 10. That there is a likelihood of repetition of neglect if the minor [children] were returned to the parents' home[s].

Respondent contends that (1) findings of fact 9.A.1, 9.A.2, and 10 are not supported by the evidence[4], and (2) the findings of fact do not support termination on the ground of neglect. We address each argument in turn.

Finding of fact 9.A.1, which summarizes respondent's failure to maintain stable and appropriate housing, is supported by the testimony of RCDSS social worker Kim Allman and Chatham County Department of Social Services ("CCDSS") director Sandy Coletta. From the time that the children were removed from respondent's custody, RCDSS made it clear that respondent needed to maintain stable housing in order to properly care for the children. Although respondent moved in with her parents, it became readily

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[4] Respondent also suggests that it was error for the trial court to use identical findings to support both grounds for termination. She does not cite any authority for this proposition, and we are not aware of any authority that prohibits the trial court from using the same findings of fact to support multiple grounds for termination. Therefore, this argument is without merit.

apparent that their residence was not an appropriate housing arrangement and that respondent would need to find independent housing. Indeed, Ms. Allman testified that she requested from CCDSS a home study of the maternal grandparents' home in Siler City. However, CCDSS denied the request based on past concerns regarding the grandparents' home. Additionally, Ms. Coletta testified regarding the home study request, and a redacted letter from CCDSS to RCDSS, which denied the study, was admitted into evidence. The letter stated, in pertinent part, "Chatham County really does not need to do a home study to be able to tell you that we would definitely [] not support any type of placement with the grandparents."

Ms. Allman further testified that respondent was aware she needed to maintain separate housing:

> Q. Did you ever discuss with the mother the fact that she needed to get her own separate residence away from the parents where a home study could be performed?
>
> A. I have discussed that with the mom, yes.
>
> . . .
>
> Q. Okay. And, [], what was the mother's response to, [], your discussion about separate housing on her own?
>
> A. That she would try, [], she would, she would try to do it. She [would] work with, [], with mental health and try to do what she said.
>
> Q. So, she acknowledged that requirement?
>
> A. Right.

> Q. Okay. Outside of the attempts to get the assisted housing, did she make any other attempts to, [], get separate housing?
>
> A. No.

Finally, in response to a question from the trial court, Ms. Allman clarified the reason for the RCDSS requirement of independent housing. Ms. Allman agreed that the requirement was not just a department policy, but rather was the result of respondent's parents' background or lifestyle, which made them unacceptable to RCDSS as a placement resource. Based on the foregoing testimony by Ms. Allman and Ms. Coletta, we conclude that finding of fact 9.A.1 was supported by clear, cogent, and convincing evidence.

Finding of fact 9.A.2 summarizes Dr. Sheaffer's findings from his 7 June 2005 evaluation of respondent. Dr. Sheaffer determined that respondent had a verbal I.Q. score of 62, a nonverbal I.Q. score of 64, and a full scale I.Q. score of 60. Dr. Sheaffer testified that respondent's I.Q. score is within the range of significant intellectual impairment or mental retardation, and that her score falls in the first percentile, meaning that 99 out of 100 people will score at or above her level of cognitive functioning. Dr. Sheaffer also administered an academic achievement test and found that respondent had a reading score of 71, which is at the fourth grade level, a spelling score of 63, which is at the third grade level, and an arithmetic score of 55, which is at the second grade level.

In order to determine respondent's functional abilities, Dr. Sheaffer also questioned respondent about basic self-help skills and parenting skills. Dr. Sheaffer gave respondent a set of nine hypothetical questions regarding various situations one might experience while caring for a child and asked her how she would respond in the given situation. Dr. Sheaffer testified that respondent responded "I don't know" to four of the questions. With respect to three of the situations, respondent indicated that she had experienced the situations, but that she had failed to respond or take any action. Based on the foregoing assessment, along with other questions about her self-care, Dr. Sheaffer was of the opinion that respondent was in the marginally self-capable range, that her adaptive functioning ability was significantly below average, and that she had significant deficits in her ability to parent. Although this meant that respondent "for the most part [would be] able to care for herself without too much support," "her ability to care for children, particularly high need children," was "extremely poor." We find Dr. Sheaffer's testimony to be clear, cogent, and convincing evidence which supports finding of fact 9.A.2.

Respondent contends that Dr. Sheaffer's findings are not relevant because his examination was conducted three years prior to the termination proceeding. However, Dr. Sheaffer explained that his findings regarding respondent's intellectual deficiencies would be stable over time:

> I.Q. scores are considered to be stable over time and robust. That being said, what we

> know is that I.Q. scores will sometimes *decrease* dramatically because of things like head injuries or organic brain difficulties . . . but that an I.Q. score obtained from someone at any particular age is considered to be the best representation of what their I.Q. score is going to be at any other time. So . . . her I.Q. score and anyone else's I.Q. score is considered to be a stable measure rather than something that is expected to change significantly.

Moreover, any misgivings related to the date of the examination go to weight and credibility of the evidence, not relevance or admissibility, and are for the trier of fact to consider. As the trier of fact in a juvenile proceeding, it is the trial court's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984). Respondent's argument that Dr. Sheaffer's evaluation is irrelevant is thus without merit.

Finding of fact 10 addresses respondent's likelihood of repetition of neglect. This finding is also supported by the testimony of Dr. Sheaffer. He testified that respondent's intellectual level is significantly impaired, and that her I.Q. would be constant over time. Because respondent's inability to parent is due to her low cognitive functioning, which is not likely to improve, it was reasonable for the trial court to conclude that repetition of neglect would be likely if the children were returned to respondent's care.

Finally, we conclude that the findings of fact outlined above are sufficient to support termination on the ground of neglect. The findings establish that all four children were adjudicated neglected in 2005, based on respondent's inability to provide them with adequate care and supervision. The findings also establish that respondent has been unable to obtain stable and appropriate housing independent of her parents since her children were removed from her custody. Rather than attempting to meet this requirement, respondent appears to take the position that she need not comply because she believes her parents' home is appropriate housing. However, the evidence establishes that CCDSS refused to conduct a home study on the grandparents' home, and RCDSS therefore has deemed it inappropriate. Further, the findings establish that respondent is incapable of parenting the children based on her low cognitive functioning, and that her deficiencies will likely lead to repetition of neglect in the future. Taken together, the findings of fact support the conclusion that respondent neglected the children by failing to provide proper care, supervision, and discipline. Accordingly, we find that the trial court did not err in concluding that grounds exist to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Respondent also contends that the trial court erred in finding that grounds exist to terminate her parental rights on the basis of N.C. Gen. Stat. § 7B-1111(a)(2). However, we have concluded that the trial court did not err in terminating respondent's parental rights on the ground of neglect. As "[a] single ground . . . is

sufficient to support an order terminating parental rights," we need not address this assignment of error. *In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006).

Affirmed.

Judges McGEE and JACKSON concur.

Report per Rule 30(e).