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NO. COA10-462

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

IN THE MATTER OF:

N.A.B.,
Minor Child.

Buncombe County
No. 07 JT 455

Appeal by respondent mother from judgment entered 6 January 2010 by Judge Gary S. Cash in Buncombe County District Court. Heard in the Court of Appeals 16 August 2010.

John C. Adams for petitioner-appellee.

Robert W. Ewing for respondent-appellant.

M. Carridy Bender for guardian ad litem.

GEER, Judge.

Respondent mother appeals from the judgment terminating her parental rights to N.A.B. ("Nora").¹ Because ample evidence supports the trial court's conclusion that grounds existed to terminate respondent mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (2009) (neglect) and because respondent mother has not challenged the trial court's decision that termination of parental rights is in Nora's best interests, we affirm.

Facts

¹The pseudonym "Nora" is used throughout the opinion to protect the privacy of the child and for ease of reading. We also note that the trial court terminated the parental rights of Nora's father. He is not, however, a party to this appeal.

Nora was born in October 2007. On 4 October 2007, Buncombe County Department of Social Services ("DSS") received a Child Protective Services report alleging that respondent mother had been homeless throughout her pregnancy and refused to stay in shelters because the shelters would not allow respondent father to stay with her. The report also expressed concern regarding how respondent mother, who was an insulin-dependent diabetic, was obtaining the medicine she needed for her diabetes. The report noted that respondent mother had lost two other children through adoptions.

Respondent mother admitted to a DSS social worker that she had, in fact, lost a son to adoption in the state of Washington. Respondent mother had been convicted of providing drugs to her son, which is what led to the social services involvement in that state. Although it appears that respondent mother had a second child in Washington, there is no information in the record about what happened with that second child.

DSS obtained records from Washington regarding respondent mother and Andrew Meagher, the father of her son. Those records revealed that respondent mother had confessed to providing her 21-month-old son with marijuana because she believed it helped with his asthma and hyperactivity and also helped him sleep better. She denied lighting the marijuana pipe for her son, explaining "quite frankly, he can do it all by himself. It's quite cute seeing him smoke it all by himself." Respondent mother also admitted telling her son that if he wanted to take other drugs or drink alcohol, he should bring it to the apartment so that respondent mother could

observe him and help him if he became addicted. The Washington records confirmed that respondent mother's parental rights to this son were involuntarily terminated.

Respondent mother told DSS that she had been homeless previously in both Mississippi and Florida and had lived "all over" because she was homeless. While in Mississippi, the respondent parents married. The respondent parents, together with Mr. Meagher, moved to North Carolina from Mississippi in 2007. The three were homeless for two to three weeks until the respondent parents and Mr. Meagher moved into an apartment together. Mr. Meagher considers himself Nora's "spiritual uncle" and participated in the hearings that led up to the termination of parental rights judgment.

Upon the initial involvement of DSS, respondent mother voluntarily placed Nora in a foster program called Angel Watch. On 3 December 2007, DSS filed a juvenile petition alleging that Nora was a neglected and dependent child. At the adjudication hearing, respondent mother stipulated to the allegations contained in the DSS petition. Respondent father, however, was not present at the adjudication hearing because he and respondent mother had separated.

Following the hearing, the trial court concluded that Nora was neglected and dependent, and DSS was awarded custody. The trial court ordered respondent mother to comply with several conditions for reunification, including: (1) completing a psychological evaluation and following any recommendations; (2) completing a

substance abuse assessment and following any recommendations; (3) completing an anger management assessment and following any recommendations; and (4) completing parenting classes.

By the time of a permanency planning review hearing held on 17 April 2008, the respondent parents had reunited and were residing with Mr. Meagher in the same apartment as before. The household's sole income came from respondent father and Mr. Meagher selling their blood plasma. Respondent mother had completed a substance abuse assessment, and no further services were needed. She also had started parenting classes and asked DSS for increased visitation. Although the trial court found that the conditions leading to Nora's removal from the home continued to exist, the court concluded that the permanent plan should still be reunification.

In June 2008, respondent mother completed a psychological assessment with Dr. Michael Grandis. Respondent mother told Dr. Grandis that she went from "being happy to sad on a drop of a dime." She admitted to Dr. Grandis that, in the past, she had abused, among other drugs, acid, crystal meth, marijuana, cocaine, and mushrooms. Dr. Grandis determined that respondent mother experienced a moderate to severe level of emotional distress and that in response to stress, she is likely to either withdraw or act out angry impulses. Further, he reported that respondent mother is hypervigilant and distrustful of the motives of others. Dr. Grandis recommended that respondent mother participate in individual psychotherapy, psychiatric consultation and

intervention, anger management, and parenting classes. He also strongly recommended that reunification between respondent mother and Nora be contingent upon respondent mother's participation in therapy and "demonstrated progress" as verified by a mental health professional.

Dr. Grandis also evaluated respondent father, who exhibited symptoms of depression and anxiety. Dr. Grandis recommended a psychiatric evaluation for medication, as well as individual counseling. Mr. Meagher, the third adult in the household, told Dr. Grandis during his own assessment that he gets overly aggressive and violent on occasion, which could be triggered by "just about anything." Such episodes could include physical aggression, and Mr. Meagher admitted that it might be a possibility that he could become violent toward the minor child in the home. Mr. Meagher was on medication which was helping him have fewer episodes of aggression.

On 2 July 2008, respondent mother reported to DSS that respondent father had left the home two days earlier, and respondent mother did not intend to let him return. During a home visit on 11 July, respondent mother admitted that respondent father had hit her while he was living there. Nevertheless, by 2 September 2008, respondent father had returned to the apartment and planned to stay. At one point, the household had no food for three or four days, and the adults were behind on their rent and in danger of being evicted. Respondent mother's visits with Nora,

however, generally went well, although she did not ask about the child's development or anything about the child's day-to-day life.

At the 16 September 2008 permanency planning hearing, a social worker expressed concern that the adults were not making substantial progress toward reunification, particularly given the need for intensive mental health services. Although respondent mother and Mr. Meagher were receiving some mental health services, they did not understand that they also needed to undergo individual counseling. The trial court acknowledged that getting therapy would be difficult as neither respondent mother nor Mr. Meagher had insurance. The trial court continued the permanent plan of reunification, but ordered all three adults to engage in mental health services, including appropriate therapy.

At the 16 December 2008 permanency planning review hearing, the trial court found that since the previous hearing, respondent father had left the home at one point, but he was back living in the home again even though respondent mother had stated she would not take him back. It was reported that the adults were having trouble keeping the heat on in the home. Respondent mother had begun anger management classes, but the program where she was receiving mental health services had closed, and she was referred to a new facility. The court found that as of 20 November 2008, none of the adults were participating in individual therapy, and respondent mother insisted that the services she was receiving were sufficient. The trial court found that none of the adults had made substantial progress in correcting the conditions that led to the

removal of the child and, in accordance with the request of both DSS and the guardian *ad litem*, the trial court changed the permanent plan to adoption and authorized DSS to cease reunification efforts.

On 13 February 2009, DSS filed a petition to terminate respondent mother's parental rights ("TPR petition"), alleging the following grounds: (1) neglect, N.C. Gen. Stat. § 7B-1111(a)(1); (2) willfully leaving the minor child in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress had been made to correct the conditions that led to the removal of the child, N.C. Gen. Stat. § 7B-1111(a)(2); (3) willful failure to pay a reasonable share of the cost of care for the minor child, N.C. Gen. Stat. § 7B-1111(a)(3); and (4) incapability of providing for the proper care of the minor child, N.C. Gen. Stat. § 7B-1111(a)(6). Respondent mother filed an answer to the TPR petition on 15 April 2009 denying the material allegations of the petition.

On 24 August 2009, DSS filed a motion to amend the TPR petition to add N.C. Gen. Stat. § 7B-1111(a)(9) as an additional ground for termination since respondent mother's parental rights to another child had previously been involuntarily terminated. Respondent mother objected to the motion to amend. On 29 September 2009, the trial court entered an order overruling respondent mother's objection and granting the motion to amend the TPR petition.

The hearing on the TPR petition was held over several days: 26 October, 27 October, 29 October, and 19 November 2009. Following the hearing, the trial court determined that grounds existed to terminate respondent mother's parental rights based on neglect under § 7B-1111(a)(1), willful failure to make reasonable progress under § 7B-1111(a)(2), and the termination of parental rights as to another child under § 7B-1111(a)(9). The trial court specifically concluded that DSS had failed to prove that grounds existed under §§ 7B-1111(a)(3) and 7B-1111(a)(6). At disposition, the trial court determined that termination of respondent mother's parental rights was in the best interests of the child and ordered that respondent mother's rights be terminated. Respondent mother timely appealed from that order.

Discussion

Proceedings to terminate parental rights are conducted in two stages: (1) the adjudication phase, governed by N.C. Gen. Stat. § 7B-1109 (2009) and (2) the disposition phase, governed by N.C. Gen. Stat. § 7B-1110 (2009). *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Upon review of an order terminating parental rights, this Court must determine (1) whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and (2) whether the court's findings of fact support its conclusions of law that one or more statutory grounds for termination exist. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). Findings of fact supported by competent evidence

are binding on appeal even though there may be evidence to the contrary. See *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988).

Once a trial court has determined at the adjudication phase that at least one ground for termination exists, the case moves to the disposition phase where the trial court decides whether a termination of parental rights is in the best interests of the child. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908; N.C. Gen. Stat. § 7B-1110(a). The trial court is not required to terminate parental rights, but has the discretion to do so. *In re Tyson*, 76 N.C. App. 411, 419, 333 S.E.2d 554, 559 (1985). This Court, therefore, reviews the decision to terminate parental rights for abuse of discretion. *Id.*

On appeal, respondent mother challenges each of the grounds found by the trial court. Since we have concluded that the trial court did not err in concluding that the ground of neglect existed and as only one ground is needed to support the termination of parental rights, we decline to address respondent mother's arguments regarding the other two grounds for termination. See *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) ("[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and 'an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.'" (quoting *In re Clark*, 159 N.C. App. 75, 78

n.3, 582 S.E.2d 657, 659 n.3 (2003))), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

With respect to the trial court's findings of fact, respondent mother specifically challenges only findings of fact 35 and 52. We address only those portions of the findings relevant to the neglect ground. Since the remaining findings of fact are not challenged, they are deemed supported by competent evidence and are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Under N.C. Gen. Stat. § 7B-1111(a)(1), a trial court may terminate parental rights if the parent has "neglected the juvenile." A neglected juvenile is defined by statute as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . or who has been abandoned . . . or who lives in an environment injurious to the juvenile's welfare" N.C. Gen. Stat. § 7B-101(15) (2009).

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 Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). The trial court must, however, still focus on "the fitness of the parent to care for the child at the time of the termination proceeding." *Id.* at 715, 319 S.E.2d at 232 (emphasis omitted). When, as here, a child has not been in the parent's custody "for a significant period of time prior to the termination hearing, . . . the trial court must also consider evidence of changed conditions

in light of the history of neglect by the parent and the probability of a repetition of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003).

Here, there is no dispute that the initial adjudication determined that Nora was a neglected child. Respondent mother contends that the evidence does not support the trial court's finding of a probability that neglect would likely be repeated if Nora were returned to respondent mother's care. Respondent mother argues that the trial court based its decision on respondent mother's past actions and failed to consider her changed conditions as of the hearing on the TPR petition. We disagree.

The trial court found, in unchallenged findings of fact, that "[s]everal issues resulted in the respondent mother's neglect and dependency adjudication like chronic instability, mental health issues, parenting issues, substance abuse, anger management and Mr. Meagher's mental health and anger issues." The court noted, as an initial matter, that the same issues had existed in the state of Washington, respondent mother failed to resolve those issues, and, as a result, she lost her parental rights to one child. The trial court found that as of the date of the TPR hearing, it was "concerned with the respondent mother's lack of financial stability and dysfunctional relationships with men" although the court did find that her home is regularly neat and clean.

More specifically, the court found that during the course of the underlying juvenile proceedings, the only income earned by the three-adult household in which respondent mother lived was obtained

by the two men selling their plasma. At the time of the TPR hearing, however, respondent father had left the household for the fourth time and his whereabouts were unknown. In addition, Mr. Meagher moved out of respondent mother's apartment on or about 9 July 2009.

Respondent mother had not been employed at any point during the pendency of the case. Although respondent mother applied for social security disability benefits, she had not been awarded benefits by the time of the hearing, and the trial court found "that it will be some time before the respondent mother will be awarded benefits if she is ever awarded benefits." The court also found that respondent mother had not been able to make her child support payments and, in fact, had been able to make only a single payment (in February 2009).

The findings noted that respondent mother's case manager believed that respondent mother's level of functioning was "'poor'." The case manager had told respondent mother that she needed to be on her own and Nora needed to be her first priority. The case manager "would not agree with the minor child being placed back with the respondent mother."

The trial court found that respondent mother has been "diagnosed . . . with Bipolar Disorder, Schizoaffective Disorder, Depressive Type, Posttraumatic Stress Disorder (PTSD), Rule out Impulse Control Disorders not elsewhere classified, also consider Intermittent Explosive Disorder, Rule out Substance Related Disorders, Alcohol Abuse." The trial court found, based on

respondent mother's psychological evaluation, that she suffers a moderate to severe level of emotional distress, that she has difficulty controlling or expressing her anger appropriately, and that in response to stress, she is likely to either withdraw or act out her angry impulses. The court further found based on this evaluation that she exhibits poor judgment, is often unpredictable and impulsive, is hypervigilant, and is suspicious of the motives of others. The court found that Dr. Grandis recommended in June 2008 that any reunification with Nora "be contingent upon participation in therapeutic supports . . . and demonstrated progress specifically verified by mental health practitioners involved in her treatment." (Emphasis added.)

The court found, however, that respondent mother "would not engage in individual therapy. She refused to do so, claiming that the community support worker was all she needed. Although she had been told numerous times that her community support worker does not satisfy the need for individual therapy, the respondent mother refused to engage in therapy until December 2008[,] just before the trial court changed Nora's permanent plan to adoption at the 16 December 2008 permanency planning hearing.

With respect to the individual therapy begun in December 2008, the trial court found that respondent mother was compliant with her appointments, but that Elias Rollett, who had worked with respondent mother for a year, believed that her participation in her therapy was "'sub-optimal'." The court found that "Mr. Rollett's concern also was the respondent mother's lack of general

stability" with "respondent mother's stressors [being] financial issues, relationships with men and conflicts with people." Further, the trial court found, based on Mr. Rollett's testimony, that the stressors adversely affect respondent mother's mental health. The court also found that despite this therapy, respondent mother had experienced two crisis events three months prior to the TPR hearing, including being the victim of a sexual assault in her home by someone she knew and witnessing a violent incident in her home perpetrated by Mr. Meagher.

Further, the trial court found that although respondent mother admitted respondent father had engaged in domestic violence, she continued to allow him to return to live with her despite repeated assurances to DSS that she did not intend to let him back into her life. Respondent mother admitted that she had allowed respondent father to return "some 15 times during their relationship." Ultimately, respondent father left "on his own volition" and not because respondent mother requested that he do so. With respect to Mr. Meagher, the trial court found, based on Dr. Grandis' evaluation, that "he is susceptible to periods of agitation and aggression which would place others around him at risk" and that Mr. Meagher's issues should be "sufficiently rectified before he is in the presence of a child."

With respect to visits with Nora, the trial court found that the respondent parents did not ask how Nora was doing or anything about her day-to-day life. As Nora had gotten older, the respondent parents had a more difficult time interacting with Nora,

who had had developmental delays and was in physical therapy. The court found that respondent mother "sometimes had unrealistic, non-age appropriate expectations of the minor child." The trial court further found that any parent of Nora would need to be trained to appropriately deal with Nora's gross motor delays, but respondent mother had not been trained. In addition, "[d]uring visits, when the minor child needed a diaper change, the respondent mother would not do the change and would hand the minor child off to the respondent father or Mr. Meagher to do it."

None of the findings summarized above has been challenged by respondent mother, and they are, therefore, binding on appeal. Respondent mother does challenge the portion of finding of fact 35 stating that respondent mother is "unable to appropriately address the minor child's needs in visits." Although respondent mother points to testimony that the visits went well, she did not challenge the findings that she and respondent father have had more difficulty interacting with Nora as she has gotten older, that she had unrealistic expectations of Nora, that she had not been trained to address Nora's gross motor delays, and that she would not change the child's diapers during visits. These undisputed findings all support this portion of finding of fact 35.

Respondent mother also disputes the portion of finding of fact 35 stating that she lacked "an ability to improve the conditions that led to the Department becoming involved with the family to begin with." In support of her argument, she points only to testimony of Mr. Rollett that she had been compliant with her

treatment. The trial court's finding is, however, amply supported by the trial court's other unchallenged findings that Mr. Rollett believed respondent mother's participation in therapy was "'sub-optimal'" and that, despite receiving various services and therapy, respondent mother continued to have chronic instability, mental health issues, parenting issues, and problems with her relationships with men, including domestic violence.

In addition, respondent mother challenges the portion of finding of fact 52 stating that "[s]ubsequent to the filing of the petition for TPR, the respondent mother was deeply involved in services[,] " but "[p]rior to the filing of the petition for the TPR the respondent mother [was] involved in some services." Respondent mother contends that she was also deeply involved in services prior to the filing of the petition. The guardian *ad litem* agrees that this portion of the finding of fact is not supported by the evidence.

Regardless, even assuming that respondent mother was involved in services to the same degree before and after the filing of the TPR petition, that fact would not alter the analysis as to the neglect determination. Despite the services prior to the filing of the TPR petition, respondent mother still had, as the trial court found in an unchallenged portion of finding of fact 52, "chronic instability" and "poor decision making regarding her financial needs."

The trial court's unchallenged findings of fact show that even after all of the services, respondent mother still had the same

issues that existed at the commencement of the underlying proceedings. As the trial court ultimately found in concluding that the ground of neglect existed:

54. The court finds that pursuant to N.C.G.S. § 7B-1111(a)(1) the respondent mother has neglected the minor child, as specified above. There is a high likelihood of a repetition of the neglect if the minor child was returned to the care and control of the respondent mother as the respondent mother has failed to correct the conditions that led to the removal of the minor child from her care. The respondent mother's instability that the court found in the underlying case still exists. The respondent mother continues to be unable to provide a safe and stable home for the minor child. The respondent mother is still dealing with her mental health issues and financial instability. Despite her involvement in services, crisis events as specified above occurred in her home within the last 3 months. The probability of the respondent mother achieving stability within a reasonable period of time is not good considering her mental health issues. The fact that the respondent mother has provided love and affection for the minor child is not determinative. The respondent mother lacks the ability to provide a safe and stable home due to chronic instability and the crisis events specified above. The respondent mother has not made reasonable progress to correct those conditions that caused the minor child to come into custody, despite her participation in services. The respondent mother is still exhibiting chronic instability as of the date of the filing of the petition for the TPR.

Respondent mother argues, however, that the trial court was focusing on "respondent mother's prior actions" and not the changed conditions. She argues that Mr. Rollett had been helping her for a year with her mental health and housing issues, as well as food stamps and entitlements. She again points to her compliance with

her therapy appointments and keeping in touch with Mr. Rollett's organization. She also cites the fact that she had a rent-free apartment as a result of filing for disability and the fact that respondent father and Mr. Meagher were no longer living with her at the time of the hearing on the TPR petition.

Respondent has simply recited the evidence that supports her position. The trial court was, however, entitled to rely, as it did, on other evidence indicating that respondent mother's chronic issues with financial instability, domestic violence, and mental health conditions were still existing at the time of the hearing and not simply past, resolved concerns. See *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (holding that "the trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings").

We hold that the trial court's unchallenged findings of fact amply support its ultimate finding that there was a probability of a repetition of neglect if Nora were returned to respondent mother's custody. See, e.g., *In re E.N.S.*, 164 N.C. App. 146, 150, 595 S.E.2d 167, 170 (affirming conclusion of neglect "based primarily on events that took place before [child's] birth, in particular, the circumstances regarding respondent's oldest child being adjudicated neglected and dependent" and subsequent failure to demonstrate stability), *disc. review denied*, 359 N.C. 189, 606 S.E.2d 903 (2004); *In re Davis*, 116 N.C. App. 409, 414, 448 S.E.2d 303, 306 (holding that parents' failure to "obtain[] continued

counseling, a stable home, stable employment, and [attend] parenting classes" sufficient to show probability that neglect would be repeated if child were returned to care of parents), *disc. review denied*, 338 N.C. 516, 452 S.E.2d 808 (1994); *Smith v. Alleghany County Dep't of Soc. Servs.*, 114 N.C. App. 727, 732, 443 S.E.2d 101, 104 (holding that trial court adequately considered mother's improved psychological condition and living conditions at time of hearing even though it found, because of recency of improvement, that probability of repetition of neglect was great), *disc. review denied*, 337 N.C. 696, 448 S.E.2d 533 (1994).

Because respondent mother does not challenge the trial court's dispositional conclusion that termination of her parental rights is in Nora's best interests, we conclude that the trial court did not err in terminating respondent mother's parental rights on the basis of neglect.

Affirmed.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).