NO. COA08-737

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2008

IN THE MATTER OF:

A.M., Ja. M, Jo. M. Harnett County
Nos. 06 J 13-15

Appeal by respondent from order entered 11 April 2008 by Judge Resson O. Faircloth in Harnett County District Court. Heard in the Court of Appeals 20 October 2008.

Duncan B. McCormick for petitioner-appellee, Harnett County Department of Social Services.

Pamela Newell Williams for the Guardian ad litem.

Janet K. Ledbetter for respondent-appellant.

ELMORE, Judge.

Respondent appeals from an order terminating her parental rights to her sons A.M., Ja. M., and Jo. M. For the following reasons, we affirm.

Respondent and B.M. are the parents of A.M., Ja. M., and Jo. M. (collectively, the children). After respondent and B.M. divorced, respondent married M.A., who became the children's step-father. In January 2006, Harnett County Department of Social Services (HCDSS) filed separate juvenile petitions alleging that the children were abused and neglected. The petitions alleged that

respondent inappropriately disciplined the children by using a belt, switches, her hand, her fist, and a mini-blind rod. The petitions also alleged that respondent cut one of the children with a knife, inflicting injuries to his face. The petition further alleged that there was domestic violence in the home. HCDSS took nonsecure custody of the children.

On 1 February 2006, respondent pled guilty to misdemeanor assault on a child under the age of twelve. HCDSS and respondent entered into an Out of Home Service Agreement on 10 February 2006. The objectives of this plan were for respondent to: (1) gain emotional and psychological health; (2) learn and demonstrate proper parenting skills, especially appropriate discipline; (3) abide by all laws; and (4) establish and maintain a safe and healthy marital relationship. HCDSS referred respondent to a psychologist, SAFE support group, and PRIDE parenting classes. HCDSS referred the children to counselor Melanie Crumpler.

The trial court held adjudication and disposition hearings in March 2006. By order filed 12 May 2006, the trial court adjudicated the children abused and neglected juveniles based, in part, upon respondent's stipulation. The trial court specifically found that, during the late hours of 8 January 2006 or the early morning hours of 9 January 2006, respondent woke up her children when she could not find her car keys; that respondent yelled, used profane language, and threatened the children; and that respondent grabbed A.M. and struck him with a knife, leaving linear marks around his face. The trial court awarded full custody of the

children to HCDSS for placement. Respondent was ordered to keep an updated agreement with HCDSS, cooperate with the social worker, complete a psychological evaluation, follow the evaluation recommendations, and pay child support. The trial court further ordered "no visitation between the juveniles and the mother until further order of the court and specifically after the completion of her psychological evaluation."

Psychologist David Rademacher evaluated respondent on 25 May 2006. In his evaluation, Rademacher found that respondent had denied the children's statements that she beat them; that respondent took no responsibility for her abusive behavior; that respondent blamed her husband, who had tape-recorded the January 2006 assault, for losing her children to foster care; and that respondent had asserted that she had no memory of the assault. Rademacher diagnosed respondent with the following psychological disorders: Disassociative Disorder NOS, R/O Post Traumatic Stress Disorder, R/O Intermittent Explosive Disorder, Adjustment Disorder mixed with anxiety and depression, and Borderline Personality Disorder. Based on his findings, Rademacher concluded, among other things, that: (1) respondent was not stable enough to care for her children and recommended intensive weekly therapy; (2) respondent's lack of insight or willingness to take any responsibility for her abuse indicated that the treatment process would require a long-term commitment; and (3) respondent "should not have contact with her children until she is able to acknowledge her abusive behaviors

to her children, including ongoing corporal punishment and injury to her children."

At a review hearing held in June 2006, the trial court heard testimony from HCDSS social worker Terry Manahan and respondent. The trial court also received into evidence the psychological evaluation and court reports from HCDSS and the Guardian ad Litem (the GAL). The trial court made findings regarding Rademacher's conclusions in the evaluation. The trial court also found that respondent had commenced work on the reunification plan by participating in parenting classes offered through PRIDE; that respondent needed to be "allowed a sufficient time to demonstrate that she is able to make appropriate headway on a reunification plan"; and that respondent continued to live with M.A. even though an HCDSS social worker had reported arguments between the couple. The trial court further found that respondent's visitation with the children "shall be delayed at this time until further report from [her] therapist." The court ordered HCDSS to continue services with respondent on the plan of reunification and to delay visitation until further order of the court.

After several continuations, the trial court conducted a permanency planning hearing on 19 January 2007. The trial court found that respondent had participated in classes offered through PRIDE and SAFE, but continued to live with M.A. despite reported marital unrest. The trial court further found that in respondent's first letters to the children and in her video prepared for the children, respondent did not take responsibility for her actions,

including the knife attack against A.M. The trial court also found that respondent denied the children's allegations of domestic violence; that respondent's testimony was not considered credible by the court; and that respondent "is currently in denial of what she has done to the juveniles, especially A.M." Next, the court found that Crumpler testified that the children expressed extreme fear of harm from respondent if returned to her. The court also found that "[a]lthough the mother has been participating in counseling with Renee E. Holmes of EMH Counseling June 19, 2006[,] the status of the mother's current mental health progress cannot be ascertained by the court from [Holmes's] report at this time; however, the counselor did recommend supervised visits." Finally, the court found that HCDSS and the GAL recommended that continuation of reunification efforts would be futile as respondent "is in total denial of the neglect and abusive acts made by her [toward her sons]." Based on these findings, the trial court changed the permanent plan from reunification to adoption.

On 14 March 2007, HCDSS filed a motion to terminate respondent's parental rights as to A.M., Ja. M., and Jo. M. based upon neglect and abuse (N.C. Gen. Stat. § 7B-1111(a)(1)), willfully leaving the children in foster care without making progress under the circumstances (N.C. Gen. Stat. § 7B-1111(a)(2)), and willfully failing to pay a reasonable portion of the cost for the children's care (N.C. Gen. Stat. § 7B-1111(a)(3)). The trial court terminated respondent's parental rights on all grounds. Respondent appeals.

A termination of parental rights proceeding is conducted in two phases: (1) adjudication and (2) disposition. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). In the adjudication phase, the petitioner has the burden of proving the existence of one or more of the statutory grounds for termination under N.C. Gen. Stat. § 7B-1111(a) by clear, cogent, and convincing evidence. *Id.* If a petitioner meets its burden of proving one or more statutory grounds for termination, the trial court then moves to the disposition phase, during which it must decide whether termination is in the child's best interests. *Id.*

Respondent first contends the trial court erred by finding and concluding that sufficient grounds existed to terminate her parental rights based upon a finding that the children were neglected within the meaning of N.C. Gen. Stat. § 7B-101(15).

A neglected juvenile is defined in part as a "juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent[.]" N.C. Gen. Stat. § 7B-101(15) (2007). To prove neglect in a termination case, there must be clear, cogent, and convincing evidence (1) that the juvenile is neglected within the meaning of N.C. Gen. Stat. § 7B-101(15) and (2) that "the juvenile has sustained some physical, mental, or emotional impairment . . . or [there is] a substantial risk of such impairment as a consequence of" the neglect. *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (quotations and citation omitted; alteration in original).

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997) (citation omitted). "[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). If the child has been removed from the parents' custody before the termination hearing and the petitioner presents evidence of prior neglect, including an adjudication of such neglect, then "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *Id.* at 715, 319 S.E.2d at 232 (citation omitted). Thus,

> [if] there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and 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.

In re Reyes, 136 N.C. App. at 814-15, 526 S.E.2d at 501 (citation omitted).

When, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, a trial court may 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 Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citation omitted). With

respect to respondent, the trial court found that the children had previously been adjudicated neglected. The court further determined that there was a likelihood of future neglect "if the juveniles were returned to the mother."

As to respondent, the court based its determination of the likelihood of future neglect on respondent's conduct between the initial adjudication of neglect in March 2006 and the termination of parental rights hearing, finding that: (1) respondent failed to participate in marital counseling; (2) in February 2007, respondent cursed and yelled at her husband in the parking lot outside the building in which her husband was attempting to participate in parenting classes; (3) in March 2007, after separating from her husband, respondent assaulted her husband with a knife; (4) respondent denied domestic violence allegations made by the children to their therapist; (5) in an effort to help the children, their therapist advised respondent to write a letter to demonstrate that she was taking responsibility for the January 2006 incident and to apologize to the boys; (6) respondent's video and handwritten letters received by the social worker on 7 November 2006 did not contain an apology or acceptance of responsibility as discussed; (7) after Manahan spoke with respondent about her failure to demonstrate acceptance of responsibility in the letters, he received a second set of letters; and (8) although respondent participated in the Family Services Agreement services, she failed to acknowledge her responsibility, comprehend the children's fear, and apologize to her children.

In her brief, respondent only challenges the finding that she did not acknowledge her responsibility and did not apologize. Consequently, the remaining findings are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (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.").

At the hearing, HCDSS social worker Manahan testified that in the first set of letters received on 7 November 2006, respondent failed to accept responsibility for her actions and failed to apologize for her actions. Manahan testified that, on 13 November 2008, he told respondent about his "disappointment that she was not taking responsibility" and, five days later, he received a second set of letters faxed from respondent's attorney's office. Manahan acknowledged that respondent took responsibility for the assault and apologized in the second set of letters, but testified that he and his supervisor thought that "it was too late, and it did not represent her true self[.]" Upon questioning about the second set of letters by respondent's attorney, Manahan testified, "I assumed because it was [faxed] from your office after input from me, which is an assumption, that she's only saying the things that now she knows she better say to get her kids back." The trial court properly relied on Manahan's testimony and determined that respondent did not accept responsibility or offer an apology because the second set of letters was not credible.

Our review of the record reveals that the trial court, based on clear, cogent, and convincing evidence, determined that the children had been subjected to a history of neglect and were likely to be similarly neglected in the future and that the findings are sufficient to show neglect. Here, the trial court found that pursuant to the psychological evaluation, respondent "should not have contact with her children until she is able to acknowledge her abusive behaviors to her children, including ongoing corporal punishment and injury to her children." The trial court made findings that respondent had made progress with her case plan by participating in PRIDE and SAFE and attending counseling. Despite such progress, the trial court found that respondent had an angry exchange with her husband and assaulted her husband with a knife, as she had assaulted A.M. in 2006. Further, respondent denied the domestic violence allegations made by the children. Manahan testified that, after five months of intensive therapy, respondent failed to achieve mental and emotional health, which was essential to respondent's reunification with her children.

We conclude that the trial court had clear, cogent, and convincing evidence to determine that the children had been subjected to a history of neglect and were likely to be similarly neglected in the future and that the findings are sufficient to show neglect. We further conclude that these findings of fact support the trial court's conclusion that grounds existed to terminate respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). *See, e.g.*, *In re Davis*, 116 N.C. App. 409, 414, 448

S.E.2d 303, 306 (1994) (stating that the parents' failure to "obtain[] continued counseling, a stable home, stable employment, and [attend] parenting classes" was sufficient to show a probability that neglect would be repeated if the child were returned to the care of the parents). Because we hold that the trial court properly found and concluded that a ground existed to terminate respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), we do not address the other grounds for termination. *See In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 904 (1984) (holding that finding one statutory ground is sufficient to support the termination of parental rights).

Affirmed.

Chief Judge MARTIN and Judge STEELMAN concur.

Report per Rule 30(e).