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NO. COA10-385

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

IN THE MATTER OF:

D.H. and	Wayne County
C.W.,	Nos. 04 JA 231
Minor Children.	04 JA 234

Appeal by respondent from orders entered 4 February 2010 by Judge David B. Brantley in Wayne County District Court. Heard in the Court of Appeals 29 September 2010.

Baddour, Parker & Hine, P.C., by James W. Spicer, III, for petitioner-appellee.

Robin E. Strickland for respondent-appellant mother.

Pamela Newell for guardian ad litem.

HUNTER, Robert C., Judge.

Respondent-mother Teresa W. appeals from the trial court's orders terminating her parental rights with respect to her son C.W. ("Clay") and her daughter D.H. ("Darcy").¹ Respondent's sole contention on appeal is that "[t]he trial court erred when it concluded [she] neglected Clay and Darcy." We conclude, however,

¹Pseudonyms are used throughout this opinion to protect the juveniles' privacy and for ease of reading. We note that, in violation of N.C. R. App. P. 3.1, certain confidential details regarding the juveniles, including their names and birthdays, are not redacted in the record on appeal.

that the trial court's unchallenged findings of fact support its conclusion of law that neglect exists as a basis for terminating respondent's parental rights. Accordingly, we affirm the trial court's orders.

Facts

Respondent has four children: A.W. ("Abbey") (born March 1991), B.W. ("Betsy") (born February 1993), Clay (born May 1994), and Darcy (born June 2000). Respondent and her children have a significant history of involvement with departments of social services. While living in Missouri, Abbey, Betsy, and Clay were removed from respondent's custody on 24 November 1995 and placed in the custody of a Missouri department of social services. The three children were not returned to respondent's custody until 18 October 1996. The juvenile case in Missouri was closed on 17 July 1997.

Although it is unclear when respondent, Abbey, Betsy, and Clay moved to North Carolina, they were living in Granville County in October 1999 when the Granville County Department of Social Services ("GCDSS") investigated allegations of neglect. On 2 June 2000, GCDSS filed a petition alleging that Abbey, Betsy, and Clay were neglected juveniles. In late June 2000, respondent gave birth to Darcy; Abbey, Betsy, and Clay went to live with their biological father, Leonard W., in Missouri that same day. GCDSS closed its file in November 2000 since Abbey, Betsy, and Clay had moved back to Missouri.

By 2002, respondent and her four children were living in Lenoir County when the Lenoir County Department of Social Services

("LCDSS") began investigating respondent for alleged neglect and improper supervision. In September 2002, respondent and her four children moved in with her boyfriend, Jose H., and his father. On 2 October 2002, all four children were removed from respondent's custody and placed in foster care after LCDSS substantiated allegations that respondent was leaving the children with male caretakers and one of the children was sexually assaulted. While the LCDSS case was open, the children were in foster care for approximately six months, but were eventually returned to respondent's custody and the case was closed in September 2003.

By November 2004, respondent and her four children were residing in Wayne County. On 4 November 2004, the Wayne County Department of Social Services ("WCDSS") filed juvenile petitions alleging that each of the four children were neglected and dependent. The petitions alleged that respondent was allowing Betsy, who was 11 at the time, to have boys spend the night in her room and that she was having sex with them. During a home visit, open beer cans, open condom wrappers, and pornographic magazines were found on the floor of Betsy's room. Clay, who was 10, was suspended from school after drawing a picture of a girl in his class with a knife through her head and was later expelled when he brought a knife to school. Betsy, Clay, and Darcy, were all caught shoplifting on 31 October 2004. The children's school reported that Betsy was coming to class dressed "provocatively" and, when the school addressed the issue with respondent, she did not believe that Betsy's attire was inappropriate. The children's school was

also concerned because they were walking to school and often arriving before 7:00 a.m.

WCDSS was granted non-secure custody of all four children on 4 November 2004, with Abbey and Darcy being placed with their maternal aunt and Betsy and Clay being placed in foster care. Darcy was later placed in foster care when her aunt notified WCDSS that she was no longer willing to take care of Darcy.

After conducting a hearing on 3 February 2005, the trial court entered orders on 18 March 2005 adjudicating all four children to be neglected juveniles based on respondent's stipulation that there is a factual basis to support the allegations in the petitions. The court continued custody with WCDSS and granted respondent supervised visitation. The court also ordered respondent to provide WCDSS and the guardian *ad litem* ("GAL") with copies of any psychological evaluations completed within the previous two years or, if none had been completed, to obtain a psychological evaluation and comply with any treatment recommendations.

A review hearing was held on 28 July 2005 and the trial court entered an order on 25 August 2005, in which it found that respondent was regularly attending individual therapy sessions with Dr. James T. Smith as well as family sessions with her children. Dr. Smith indicated that if reunification were to be the permanent plan for the juveniles, it should be implemented gradually. The court also found that, in violation of a prior order, respondent had male friends in her home during the first unsupervised weekend visit with her children. Although it was explained to her that she

could not have male friends in the presence of her children during the visits, respondent took her children out during a second visit to meet some male friends. Consequently, the court ordered that all future visits were to be supervised by WCDSS.

A permanency planning hearing was held on 6 October 2005. In its corresponding orders, the trial court found that respondent was working; that she was enrolled in an RN prerequisite program; that she was continuing individual and family counseling; and, that respondent's visits with her children were going well. The trial court continued reunification as the children's permanent plan and ordered that the children be "gradually returned" to respondent's custody based on Dr. Smith's recommendations.

The trial court entered permanency planning orders on 7 April 2006, in which it found that, in violation of prior orders, respondent's boyfriend was living with her and was present during a weekend visit with the children. The court also found that, while respondent had "technically complied" with prior orders concerning her self-improvement, she had "not demonstrated improved judgment or improved parenting skills." The court additionally found that respondent had begun working the second shift at Wayne Memorial Hospital, which, while allowing her to attend community college during the day, left "no time remaining to exercise proper care and supervision for the juvenile[s]." Consequently, the court ceased reunification efforts and changed the permanent plan to adoption. Visitation between respondent and the children was subsequently suspended.

Pursuant to review orders entered 23 July 2008, visitation between respondent and the children was reinstated. By 21 August 2008, the trial court had ceased respondent's visitation with Clay and continued his permanent plan as adoption. At the same time, however, the court determined that respondent had been working toward reunification with Darcy and ordered that visitation should continue.

By the next permanency planning hearing on 6 November 2008, Abbey and Betsy had been returned to respondent's custody and Darcy had been placed with her on a trial basis. The trial court found that respondent had been working with WCDSS and had been compliant with respect to Abbey's and Betsy's placement. The court adopted a concurrent plan of reunification and adoption for both Clay and Darcy. The court, however, continued Clay's placement in foster care while Abbey, Betsy, and Darcy were living with respondent in order to "determine if [she] is able to handle the three siblings in her home."

During Darcy's trial placement, respondent failed to make appropriate child care arrangements for Darcy and WCDSS removed the child from the home in January 2009. On 12 February 2009, WCDSS filed petitions to terminate respondent's parental rights with respect to Clay and Darcy. The petitions alleged neglect as the sole basis for termination. The termination proceedings were conducted on 12-14 and 21 October 2009 and the trial court entered separate orders on 4 February 2010, in which it determined that neglect existed as a basis for terminating respondent's parental

rights. The court further concluded that termination of respondent's parental rights was in the best interest of Clay and Darcy. Respondent timely appealed to this Court from the orders terminating her parental rights.

Discussion

Respondent's sole argument on appeal is that the trial court erred in terminating her parental rights. Under our Juvenile Code, a termination of parental rights proceeding involves two distinct phases: an adjudicatory stage governed by N.C. Gen. Stat. § 7B-1109 (2009) and a dispositional stage governed by N.C. Gen. Stat. § 7B-1110 (2009). *In re Fletcher*, 148 N.C. App. 228, 233, 558 S.E.2d 498, 501 (2002). In the adjudicatory stage, "the trial court must determine whether the evidence clearly and convincingly establishes at least one ground for the termination of parental rights listed in N.C. Gen. Stat. § 7B-1111." *Id.* After the petitioner has proven at least one ground for termination, the trial court proceeds to the dispositional phase in which it "consider[s] whether termination is in the best interests of the child." *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003).

The standard of review in termination of parental rights cases is whether the trial court's findings of fact are based upon clear, cogent, and convincing evidence and whether the court's findings, in turn, support its conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). As respondent does not challenge any of the court's findings, they are "presumed

to be supported by competent evidence and [are] binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Here, the trial court determined that neglect exists under N.C. Gen. Stat. § 7B-1111(a)(1) as a basis for terminating respondent's parental rights. Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), parental rights may be terminated where the parent has neglected the juvenile. A neglected juvenile is defined as:

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. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2009).

In determining whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child "at the time of the termination proceeding." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (emphasis 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." *Id.* at 713-14, 319 S.E.2d at 231. Termination may not, however, be based solely on past conditions that no longer exist. *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997).

Nevertheless, when, as here, children have not been in the custody of the parent for a significant period of time prior to the termination hearing, "requiring the petitioner in such circumstances to show that the child[ren] [are] currently neglected by the parent would make termination of parental rights impossible." *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407. In these circumstances, 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." *Id.*

Respondent "concedes that there is a prior adjudication of neglect." She contends, however, that "[t]he trial court's findings of fact do not support the conclusion of law that [she] would likely continue to neglect [Darcy and Clay] if they were returned to her care." The trial court's uncontested findings establish that after Abbey and Betsy were returned to respondent's custody in May 2008 and the court allowed the trial placement with Darcy in November 2008, respondent arranged for Nejla Lemmon to watch her children while she worked the 3:00 p.m. to 11:00 p.m. shift at the hospital. Respondent, however, stopped taking the children over to Ms. Lemmon's house sometime before Thanksgiving 2008 because it was "inconvenient" and started taking them to work, where they would spend the night in one of the hospital's waiting rooms. Other times, respondent would either have one of Abbey's and Betsy's older friends come watch the children or leave Abbey and Betsy at home to watch Darcy. Despite their "substantial problems in the past," respondent had "absolutely no concerns"

about Abbey or Betsy watching Darcy. Respondent also allowed her boyfriend, who has a history of domestic violence, to be around her children despite the court ordering that there be no males present during the visitation.

During the period in which Abbey, Betsy, and Darcy were living with respondent, she was "overwhelmed by attempting to keep all the appointments necessary for her children" During this time, both Abbey and Betsy had appointments for mentoring services, but, as respondent explained, these services "did not work out." Respondent also allowed Abbey's Medicaid coverage to lapse. During Darcy's trial placement, which lasted from November 2008 to January 2009, respondent missed two community support appointments for Darcy. Respondent has not seen a mental health professional since September 2008 despite being ordered by the court to do so.

While living with respondent, both Abbey and Betsy engaged in self-mutilation. In early 2009, Abbey and Betsy ran away from respondent's home at the same time, with Abbey going to Missouri and Betsy living with her boyfriend in Wayne County. Although respondent "had an idea" that Betsy was living with her boyfriend, respondent did not look for her until July 2009. Betsy also quit going to school when she ran away. When respondent learned that Abbey had left Missouri and was living in Alabama, she went to Alabama and brought her back to North Carolina.

Abbey, who turned 18 in March 2009, was pregnant at the time of the termination proceedings and was expected to give birth in late October 2009. She was married on 2 October 2009. Respondent

gave her consent for Betsy, who was 16 at the time of the termination proceedings, to marry her 17 year old boyfriend. Respondent was not invited to, nor did she attend, the wedding ceremony. Betsy was pregnant at the time she was married.

Although the trial court's findings largely address respondent's problems providing appropriate supervision and child care for Abbey, Betsy, and Darcy, they are relevant to the issue of the probability of future neglect with respect to both Clay and Darcy. See N.C. Gen. Stat. § 7B-101(15) ("In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home."); *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999) ("In cases of this sort, the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case."). As the statutory definition of a neglected juvenile includes living with a person who has abused or neglected other children and as the weight to be given to this factor is a discretionary decision for the trial court, the trial court, in this case, was permitted, although not required, to conclude that Clay and Darcy were neglected based on evidence that respondent had neglected their older siblings. See, e.g., *In re C.M.*, ___ N.C. App. ___, ___, 678 S.E.2d 794, 801-02 (2009) (affirming adjudication of neglect based upon prior abuse of another child and a history of domestic

violence between the parents); *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005) (affirming adjudication of neglect of one child based on prior adjudication of neglect with respect to other children and ongoing unwillingness to accept responsibility); *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 [the 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). Accordingly, the trial court's orders terminating respondent's parental rights are affirmed.²

Affirmed.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).

²Although respondent sets out in her brief, as one of the "questions presented," the contention that the trial court erred in concluding that termination of her parental rights was in the juveniles' best interest, she has failed to argue the issue on appeal. This contention is, therefore, deemed abandoned.