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NO. COA10-440

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

IN THE MATTER OF:

A.B.S.D., D.L.E., D.L.E.,	Forsyth County
D.L.E., D.L.E.,	Nos. 04 JT 430, 432
and D.L.E.	08 JT 154, 155, 156
	09 JT 59

Appeal by respondent from order entered 13 January 2010 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 14 October 2010.

Assistant County Attorney Theresa A. Boucher, for petitioner-appellee Forsyth County Department of Social Services.

Womble Carlyle Sandridge & Rice, by Murray C. Greason, III, for guardian ad litem.

Duncan B. McCormick for respondent-appellant mother.

ELMORE, Judge.

Respondent mother appeals from the trial court's order terminating her parental rights as to the minor children A.B.S.D. (hereinafter "Alice;" all names listed here are stipulated pseudonyms to protect the identity of the minor children), D.L.E., ("Denise"), D.L.E. ("Doug"), D.L.E. ("Debbie"), D.L.E. ("Danielle"), and D.L.E. ("Darrell"). She contends that the trial court erred in terminating her parental rights, and challenges each of the grounds found by the trial court as not being supported by

sufficient evidence or findings of fact. After careful review, we affirm the order of the trial court.

I. Facts and background

Alice was born in 2001; her father is Brian S., who relinquished his rights during the termination proceedings, and is therefore not a party to this appeal. Denise was born in 2004; her father is unknown. D.E. is the father of Debbie, born in March 2005; Doug, born in December 2005; Danielle, born in 2007; and Darrell, born in 2008. D.E. also relinquished his parental rights at the termination hearing, and he is not a party to this appeal.

Respondent has two other children, K.D. ("Kevin"), and J.D. ("Jane"), who are not a part of these proceedings, but whose background is relevant as part of respondent's extensive history with the Forsyth County Department of Social Services ("DSS"). Briefly, the record reflects that DSS has been involved with respondent as far back as 1996. In 2002, respondent was convicted of misdemeanor child abuse for excessive discipline inflicted on Kevin in 2001. In October 2004, Kevin was removed from the home by DSS after an incident in which respondent asserts that D.E. spanked Kevin using an electrical cord. Based on this incident, respondent was again convicted of misdemeanor child abuse in 2005; it appears that the charges against D.E. were dropped. Kevin was adjudicated neglected at a hearing held on 30 March 2004. On 26 February 2007, respondent relinquished her parental rights to Kevin. On 22 August 2008, legal custody of Jane was granted to Jane's paternal aunt. By the time of the termination proceedings in the instant case,

respondent stated that she visited with Jane frequently, including overnight and weekend visits, although Jane's custodian told DSS that respondent does not see Jane. Respondent also stated that she maintained contact with Kevin by phone and through text messaging.

The instant proceedings began as the result of an incident that occurred in respondent's home in June 2008. DSS received a report on 10 June 2008 that then-two-year-old Doug was the victim of physical abuse and neglect. Doug had been placed in a tub with hot water which scalded him, causing second-degree burns to his buttocks, scrotum, legs, and feet. Doug's father, D.E., was watching the children while respondent was at work. D.E. was not supposed to be around the children due to prior domestic violence incidents in the home. When respondent got home and discovered the burns, she called a relative of D.E.'s who had some nursing training, and they attempted to use burn cream and gauze to treat Doug's injuries.

Doug's blisters began to burst and ooze. On the night of 10 June 2008, respondent took Doug to the hospital. Due to the severity of the burns and blisters, which had become infected, Doug remained in the hospital for two weeks. Respondent initially told DSS investigators that she was responsible for Doug's burns. She stated that she began running hot water in the tub, and since the cold water faucet was not working, she went into the kitchen to get pitchers of cold water. When she returned to the bathroom, Doug had climbed into the tub. She said she did not take him to the hospital right away because she did not think the burns were that

bad. D.E. initially told DSS that he was not in the home when the incident occurred.

Upon further investigation, DSS learned from two of the children that D.E. was the one who placed Doug in the tub, and that he had instructed the children not to tell anyone what happened. Respondent admitted that she was at work when Doug was burned, and that she delayed seeking medical treatment for him because she was afraid DSS would take her children away.

DSS filed juvenile petitions and was granted non-secure custody on 13 June 2008. Respondent was referred for a parenting capacity assessment and evaluation, which she completed on 11 July 2008 with Dr. Bert Bennett. The adjudication hearing was held on 22 August 2008, and the trial court adjudicated Doug abused and neglected. The trial court adjudicated Alice, Denise, Debbie, and Danielle neglected. The court set forth several requirements for respondent in order to work toward reunification, including: (1) follow all recommendations from the parenting and psychological evaluation, (2) complete parenting classes, (3) participate in a domestic violence program, (4) participate in individual counseling, (5) establish and maintain a safe and stable living environment, and (6) remain free from abusive or violent relationships. Respondent was ordered not to have any visitation with the children.

Prior to the adjudication hearing, respondent attended an intake session with Family Services for domestic violence counseling on 22 June 2008. On 27 August 2008, she attended an

orientation session for both individual and group domestic violence classes. Respondent attended at least twenty-four group sessions between September 2008 and May 2009, thereby completing the program. However, she did not receive a certificate of completion because she failed to pay a required \$50.00 fee. As a result, respondent failed to provide verification of completion of the program to DSS. In addition to the group sessions, respondent also attended approximately ten individual sessions dealing with safe relationships. After a session on 16 February 2009, respondent stopped attending individual counseling, although her counselor did not feel that she had completed counseling.

Respondent completed parenting classes through SCAN before the end of 2008. After a permanency planning hearing held on 12 December 2008, respondent was allowed weekly supervised visitation with all the children, as well as one-on-one visits with Alice every Friday. After Darrell was born in mid-December, respondent also brought him to the group visits. Visitation was supervised by Vanguard Home Staffing at the DSS offices. Visits were appropriate up until 2 February 2009, when during a group visit, Alice began misbehaving and being disrespectful toward her siblings and toward respondent. A Vanguard employee and the guardian *ad litem* were also in the room. Respondent attempted to correct Alice's behavior, but Alice continued to act out, and respondent got frustrated. Respondent told Alice that she was only acting that way because the guardian *ad litem* was there, and that if she continued to act that way, she would not be able to go home. She

told Alice that her siblings would get to go home, but they would have to keep visiting Alice because she would not get to go home. Respondent began to cry and several of the children were upset. At some point, three DSS social workers came into the room and told respondent they could hear her yelling at the children and that, if she did not stop, the visit would be terminated. Respondent told the DSS workers they were brainwashing her children into thinking she could not control their behavior and that they could get away with anything. The visit ended shortly thereafter.

On 13 March 2009, respondent had a one-on-one visit with Alice. Respondent was sad and said that things had not gone well in court. She told Alice that she loved her and that she had done her best, but Alice would not be able to go home with her, though that was not Alice's fault. Respondent said that a DSS social worker had "played" her, at which point the Vanguard observer told respondent to talk about something else. Respondent became emotional and said that she had thought about killing herself the previous day, that it was the DSS social worker's fault, and that Alice should tell the social worker that she hated her whenever she saw her. The Vanguard observer immediately asked Alice to leave the room under the pretext of getting tissues for respondent. Alice returned to the room with her counselor, Kathy Mazzola. It was explained to respondent that her comments were inappropriate for a seven-year-old who would not be able to understand the context. Respondent again stated that she had wanted to kill herself the previous day, that she wanted her daughter to know the

truth, and that DSS was not interested in reuniting families, only breaking them apart. After more intervention from Ms. Mazzola, respondent apologized to Alice for her comments.

As a result of the 13 March 2009 visit, visitation was suspended and respondent was referred for a psychological evaluation at Triumph, which took place on 21 May 2009. Respondent was diagnosed as having adjustment disorder with depressed mode, chronic, meaning she had experienced emotional and behavioral problems due to a stressor which lasted for more than six months. The stressor in this case was the separation of respondent from her children. Respondent failed to show for a follow-up evaluation on 2 July 2009, but returned on 7 July 2009. Respondent told the psychiatrist that she was already in individual counseling, but she would not be able to continue because of the cost. She was referred to group psychotherapy, which would be free to respondent, and she attended an initial session on 9 July 2009, but did not go to any group sessions after that.

Respondent's youngest child, Darrell, who was born in December 2008, appeared healthy at his first few visits with pediatrician Dr. Karen Gordon. However, by five weeks of age in late January 2009, Darrell's weight gain was on the low end of expected weight gain, and he was experiencing some respiratory problems. Dr. Gordon discussed with respondent how to mix formula and how much food to give Darrell. No weight concerns were identified after Darrell was weighed during a visit on 2 February 2009, but he did have a cold and continued to suffer from respiratory problems.

Two DSS social workers conducted a home visit on the evening of 25 February 2009. Respondent took several minutes to answer the door. Smoke filled the house, two boys were playing video games in the living room, and three men were drinking and playing dominoes in the kitchen. Respondent was smoking a cigarette, and one of the social workers asked her to put it out, in consideration of Darrell's respiratory problems. Darrell was lying in the middle of a bed in a bedroom, and respondent noted that she had a humidifier on for his breathing as directed by the pediatrician. Respondent then became emotional and accused the workers of trying to "catch" her with D.E., with whom she was not supposed to have contact. However, the social workers had spoken with respondent several times earlier in the day to let her know they would be making a home visit, although they did not give her an exact time for the visit.

When respondent brought Darrell in for another medical check-up on 16 March 2009, Darrell had lost weight again and he had the flu. Respondent reported to Dr. Gordon that Darrell was congested and was spitting up his formula more than usual. At that point, Dr. Gordon was very concerned about Darrell's failure to thrive and respiratory problems. Dr. Gordon conducted several tests, and directed respondent to feed Darrell every two hours, and to bring him back the following day for an upper gastrointestinal X-ray. Dr. Gordon also discovered that Darrell had a hernia that required surgery. Respondent did not return the next day, but brought Darrell in on 19 March 2009, three days later, when his weigh-in

revealed that he had gained a little weight. By the next appointment, on 23 March 2009, Darrell had lost weight again, and respondent was directed to bring him back in the next day for an X-ray. On 24 March 2009, Darrell had surgery to fix a malrotation of the small bowel and the hernia. Darrell remained in the hospital for seven days before being released on 9 April 2009.

On 26 March 2009, DSS filed a juvenile petition alleging neglect and dependency of Darrell and was granted non-secure custody. When Darrell was released from the hospital, he was placed with the same foster parents who were caring for several of the other children. Respondent was granted three visits with Darrell during April 2009, though only two occurred. At the 8 May 2009 adjudication hearing, the trial court adjudicated Darrell neglected, and ordered that respondent's visitation be suspended pending receipt of the results of a psychiatric evaluation. DSS was relieved of efforts to reunify Darrell with respondent.

A permanency planning review hearing was also held on 8 May 2009 as to Alice, Denise, Doug, Debbie, and Danielle. The trial court established the permanent plan for each child as adoption, continued to suspend all visitation with respondent pending a psychiatric evaluation and ordered that DSS be relieved of all reunification efforts. The court ordered DSS to file a petition to terminate respondent's parental rights within sixty days.

A permanency planning review hearing was held on 3 June 2009 for Darrell only. The trial court adopted the permanent plan of adoption for Darrell and ordered that visitation remain suspended.

At some point after the children were removed from respondent's care, respondent moved to a new address on Blaze Street, ostensibly to establish a home away from D.E.'s influence. However, the house she chose on Blaze Street was located two houses away from D.E.'s sister. Early in the morning of 30 August 2009, respondent called the police to report being assaulted by D.E. There had been a block party earlier in the evening, and D.E. asked respondent if he could wait in her house for a ride. She let him in the house and he fell asleep on a couch. When he woke up, he was angry that someone had taken his liquor, and he pulled respondent's hair, pushed her against a wall, and hit her in the face. When police came to the house, D.E. was not there, but respondent pointed to a bedroom to indicate where he had been staying. Men's clothing and liquor bottles were located on the floor. D.E.'s wheelchair and cane were also inside the house. D.E. was apprehended soon thereafter near the house, and he told police that he had been staying at respondent's house, although it was not clear for how long. He was charged with assault on a female.

II. Termination of parental rights proceedings

On 9 July 2009, DSS filed a petition to terminate respondent's parental rights. The petition alleged that respondent: (1) neglected all six children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); (2) failed to make reasonable progress to correct the conditions which led to the removal of Alice, Denise, Doug, Debbie, and Danielle pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); (3)

abused Doug pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); and (4) committed a felony assault against Doug resulting in serious bodily injury pursuant to N.C. Gen. Stat. § 7B-1111(a)(8). In sum, four grounds were alleged pertaining to Doug; two grounds were alleged pertaining to each of Alice, Denise, Debbie, and Danielle; and only one ground, neglect, was alleged pertaining to Darrell.

The termination proceedings were held over several dates: 28 and 30 September 2009 and 6, 8, and 30 October 2009. The trial court determined that clear, cogent, and convincing evidence was presented to prove each of the grounds alleged in the termination petition. Regarding disposition, the trial court determined that termination of respondent's parental rights was in the best interests of each of the six children, and ordered that her rights be terminated. From the order entered, respondent appeals, and challenges each ground for termination as found by the trial court.

III. Standard of review

Proceedings to terminate parental rights are conducted in two parts: (1) the adjudication phase, governed by N.C. Gen. Stat. § 7B-1109, and (2) the disposition phase, governed by N.C. Gen. Stat. § 7B-1110. *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); see also N.C. Gen. Stat. § 7B-1111(a) (2009). 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 interest of the child. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908; N.C. Gen. Stat. § 7B-1110(a) (2009). 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). Therefore, this Court reviews the determination for abuse of discretion. *Id.*

IV. Legal analysis

Respondent challenges the trial court's conclusion that grounds exist to terminate her parental rights. With regard to the ground of abuse of Doug, she contends that the trial court erred in concluding that a repetition of abuse was likely if Doug were returned to her care. She also contends that the evidence does not support findings or a conclusion that respondent committed a felony assault against Doug. Further, respondent argues that the evidence does not prove that she wilfully failed to make reasonable progress to correct the conditions which led to the removal of the children. She asserts that she made extensive efforts, indicating a lack of wilfulness. Finally, she challenges the conclusion of neglect of

all six children by arguing that the trial court failed to consider changed conditions at the time of the termination hearing. We do not agree with respondent's arguments.

Turning to grounds for termination, we first address the ground of neglect, a ground alleged as to all six children. A trial court may terminate parental rights upon finding that a parent has neglected the minor child. N.C. Gen. Stat. § 7B-1111(a)(1) (2009). A child is neglected if he or she

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) (2009). In determining neglect, the court must consider "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 in original). Although evidence of a past adjudication of neglect is admissible, "[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.* This is especially true where the parent has not had custody of the child for quite some time. *Id.* at 714, 319 S.E.2d at 231.

The minor children were all adjudicated neglected in the underlying juvenile cases. Since a prior adjudication of neglect of each child was established, DSS then had the burden to show that a reasonable probability existed that neglect would most likely be

repeated if the children were returned to respondent's care. Respondent contends that DSS failed to meet its burden. She argues that she made efforts to correct the conditions which led to the removal of her children, including establishing a stable residence on Blaze Street, completing domestic violence sessions and parenting classes, and visiting with her children when permitted to do so. She notes that Darrell's medical problems were a result of organic and not environmental factors as found by the trial court, and that she regularly took Darrell to the doctor for evaluation and care. She asserts that the evidence and findings are not sufficient to support a determination that she would be likely to neglect the children if they were returned to her care. We do not agree.

Here, we summarize the trial court's findings of fact which tend to support a conclusion of neglect and the probability of repetition of such neglect in the future: (1) respondent has not maintained a safe living environment for herself and her children; (2) respondent "has failed to engage in a pattern of behavior which would assure" the safety of the children in the home; (3) domestic violence continues to occur in the home as evidenced by the assault committed by D.E. against respondent on 30 August 2009; (4) although respondent took parenting classes, she stated that she did not agree with some of the techniques taught and would not be incorporating them into her parenting of the children; (5) respondent failed to engage in adequate individual counseling to address issues of judgment, relationships, life skills, and

strategies for building a support system, and continued to insist that she did not need counseling; (6) at the 2 February 2009 group visit with all the children, respondent made an inappropriate remark to Alice that, due to bad behavior, she would not be allowed to come home, and at trial respondent testified that she would have given Alice a "whooping" for her behavior; (7) respondent had another inappropriate visit with Alice on 13 March 2009 when she told Alice that she felt like killing herself; (8) Darrell was diagnosed with failure to thrive after it was observed that he was not gaining weight, and he was diagnosed with strider, a breathing condition; (9) when DSS made a home visit on 25 February 2009, the home was very smoky with several people smoking cigarettes, even though Darrell was there; and (10) although Darrell required dedicated feeding to facilitate weight gain, when respondent noticed that the day care where she took Darrell would return unused bottles of formula, she continued to take Darrell there even though they were not feeding Darrell as directed.

We find that substantial evidence was presented to support the trial court's findings of fact regarding neglect and the probability of repetition of neglect in the future. Evidence was presented at the hearing in the form of testimony from several DSS social workers, counselors, doctors, police officers, respondent, respondent's mother, the guardian *ad litem*, and the foster mother of five of the children. Respondent does not specifically challenge the findings of fact summarized above. Findings of fact not challenged are deemed supported by competent evidence and are

binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991); *see also In re S.N.H. & L.J.H.*, 177 N.C. App. 82, 83, 627 S.E.2d 510, 512 (2006).

Taken as a whole, the evidence shows that respondent has a history of allowing the children to be subject to violence in the home, and that, even after completing domestic violence classes, she allowed D.E., the perpetrator of the abuse against Doug, back into her home where he assaulted her. Further, respondent has a history of making poor judgments, including making inappropriate comments to her children without regard to the detrimental effect such comments may have on them and blaming DSS and others for the current situation. Respondent refused to acknowledge her need for counseling, and she refused to learn from the parenting instruction as required as part of reunification efforts. In short, respondent's history with DSS and her continued failure to adequately address certain issues which led to the adjudication of neglect of each child sufficiently support the trial court's conclusion that respondent has neglected the children and such neglect will likely be repeated if the children were returned to her care. We conclude that the trial court did not err in finding neglect as a ground for termination of respondent's parental rights.

Since we find that the ground of neglect was properly found by the trial court, and as only one ground is needed to support termination of parental rights, we decline to address the issues raised by respondent relating to the other grounds for termination.

N.C. Gen. Stat. § 7B-1111(a) (2009); *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 406 (2003).

In conclusion, the trial court did not err in terminating respondent's parental rights as to Alice, Denise, Doug, Debbie, Danielle, and Darrell. Therefore, we affirm the order of the trial court.

Affirmed.

Judges JACKSON and THIGPEN concur.

Report per Rule 30(e).