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NO. COA12-895
NORTH CAROLINA COURT OF APPEALS

Filed: 20 November 2012

IN THE MATTER OF:

T.M., B.H., M.H.

Mecklenburg County
Nos. 08 JT 772-74

Appeal by respondent-mother from order entered 25 April 2012 by Judge Elizabeth T. Trosch in District Court, Mecklenburg County. Heard in the Court of Appeals 29 October 2012.

Twyla Hollingsworth-Richardson for petitioner-appellee, Mecklenburg County Department of Social Services, Youth and Family Services.

Deana K. Fleming for Guardian ad Litem.

Richard Croutharmel for respondent-appellant, mother.

STROUD, Judge.

Respondent appeals from an order terminating her parental rights to her children, M.H. ("Mary"), B.H. ("Brian"), and T.M., ("Tami").¹ Respondent contends the evidence and the findings of fact do not support any of the three grounds upon which the

¹ We will use pseudonyms to protect the juveniles' identities and for ease of reading.

trial court terminated her parental rights. For the following reasons, we affirm.

Respondent is the mother of Mary, born in October 1995, Brian, born in December 1996, and Tami, born in May 2000. On 5 November 2008, the Mecklenburg County Department of Social Services, Youth and Family Services ("YFS") filed a juvenile petition alleging that the children were neglected and dependent. YFS alleged that in October 2008, respondent inflicted marks to Brian's back and a bruise to Tami's leg; that respondent admitted to the incidents; that respondent was committed to CMC-Randolph with suicidal ideation; that respondent and children had been living in Georgia with the maternal grandmother, who had been providing for the children's care; that the maternal grandmother passed away in March 2008; and that attempts to assist respondent in providing proper care and supervision to the children had failed. YFS took nonsecure custody of the children who were placed together in a foster home.

On 15 April 2009, the trial court adjudicated the children neglected and dependent based upon respondent's stipulation to the facts alleged in the juvenile petition. The trial court held subsequent review hearings and, on 13 September 2010,

ceased reunification efforts. On 24 February 2011, YFS filed a petition to terminate respondent's parental rights to her children. By order filed 25 April 2012, the trial court terminated respondent's parental rights on the grounds that she had (1) neglected her children, (2) failed to pay a reasonable portion of the cost of care for the children, and (3) was incapable of providing for the proper care and supervision of her children such that the children are dependent juveniles. Respondent appeals.

"The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child." *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (citations and quotation marks omitted), *disc. review denied sub nom.*, *In re D.S.*, 358 N.C. 543, 599 S.E.2d 42. Unchallenged findings of fact are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

We begin by examining respondent's contention that the trial court erred in finding and concluding that she was incapable of providing for the proper care and supervision of her children such that they are dependent juveniles. N.C. Gen. Stat. § 7B-1111(a)(6) authorizes the court to terminate parental rights upon a finding that

the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6) (2011). A "dependent juvenile" is defined as one "in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2011). In determining whether a juvenile is dependent, the court must consider (1) the parent's ability to provide care or supervision

and (2) the availability to the parent of an appropriate alternative child care arrangement. *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

In support of its conclusion that respondent was incapable of providing her children with proper care and supervision, the court made the following findings of fact:

34. [Respondent] eventually relocated to Charlotte in April 2009 and since that time has resided in the homes of two women that she met at church, a new church of which she had joined. [Respondent] stayed with a [Ms. R] for approximately two months and for the last 16 months has resided with [D.M.]. [Respondent] has resided in that home without paying any rent until approximately one week ago. [Respondent] began paying \$25 per week.

. . . .

36. [D.M.] described the living arrangements that she provides for [respondent] as something she entered into to provide support and assistance to a longtime acquaintance that she deemed to have been abandoned by her own family members and in need of support or assistance.

. . . .

41. [Respondent's] employment history and her demonstrated ability to become a certified nursing assistance [sic] demonstrates that [respondent] has the ability to carry out certain basic tasks to fulfill her needs for food, shelter and clothing, as well as to meet some of her

emotional needs to be considered a competent capable adult.

42. The parenting capacity evaluation with Dr. Poston was ordered for the purpose of assessing [respondent's ability] to meet the physical, emotional, attachment and psychological needs of the children.

. . . .

46. Dr. Poston found that [respondent] has severely impaired verbal abstraction skills which affect her ability to understand the relationship between different events, understand cause and effect, and relationships between events. Dr. Poston found that [respondent's] reasoning and judgment is impaired, she has a limited ability to anticipate casual [sic] events, and that she has low insight into her own condition and lacks self-awareness.

47. Dr. Poston found that [respondent] has difficulty managing emergency situations and that her impairment in reasoning and judgment make it difficult to respond appropriately to emergency situations. [Respondent] lacks the ability to operationalize and to internalize the information that she receives such as meeting the nutritional needs of the children, and setting appropriate boundaries and limits, and using appropriate forms of discipline according to Dr. Poston.

48. Dr. Poston found that [respondent] is likely to rely on others to make decisions even if the information is wrong or contrary to her own best interest.

. . . .

50. Ms. Zhiss conducted a capacity to proceed evaluation for [respondent's] child

abuse criminal case and received information from [respondent's] criminal attorney, the mother's social security records which included mother's previous diagnosis of Down's syndrome. Ms. Zhiss completed IQ, adaptive functioning tests, and a disability assessment for [respondent]. Ms. Zhiss found that [respondent] has a full scale IQ of 73, which places her in the mildly mentally retarded range of intelligence, and that [respondent] displays characteristics common to those who are diagnosed with Down's including submission to authority figures and susceptibility to being tricked or manipulated.

51. Ms. Zhiss also found that [respondent's] borderline intellectual functioning lends to her inability to think abstractly while having the ability to learn. Ms. Zhiss explained that a person with this level of functioning can do basic things such as maintain a home and their personal grooming, but typically exercise poor judgment.

52. Ms. Zhiss ultimately recommended that a guardian be sought for [respondent] because of her diminished ability to think abstractly and incapacity to exercise good judgment. Ms. Zhiss stated that [respondent] would benefit from a neutral positive person to influence her decision-making.

53. These are the deficits that contributed to the conditions which resulted in the children being adjudicated abused and neglected. [Respondent] was easily manipulated by her aunt [Ms. G.] into repeatedly physically abusing her children. [Respondent] did this because she felt compelled to do it, despite her own belief that it was not appropriate. As this was

going on [respondent] was living in a separate residence from [Ms. G.]

. . . .

58. The same deficits necessitated the living arrangements for [respondent] with women or acquaintances who are self-reliant, independent, nurturing and supportive to [respondent].

59. [Respondent] has been dependent on others for housing, shelter, transportation assistance and for assistance in carrying out her daily living tasks.

. . . .

61. These deficits in judgment and her susceptibility to authority illustrates that [respondent] is not able to provide proper care and supervision. The effects of [respondent's] borderline intellectual functioning, downs syndrome, and other conditions as described by Dr. Poston and Ms. Zhiss cause [respondent] to be incapable of providing care and supervision to the extent that her three children are rendered dependent. [Respondent] does not have any alternate arrangement for her children.

62. [Respondent] lacks insight into her own limitations, lacks awareness of her own dependence on others for support and maintenance, and is unwilling to embrace the appropriateness of needing the support of an appropriate person to assist in providing appropriate care and supervision of her children.

63. There is a reasonable probability that the mother's incapability will continue for the foreseeable future.

. . . .

65. [Respondent] has been unable to provide any safe alternative arrangement for the care and placement of her children in the past.

Respondent challenges findings of fact 42 through 52, arguing that the trial court improperly relied on the evaluations by Dr. Poston and Ms. Zhiss to support its conclusion that she is incapable of taking care of her children. Respondent argues that her children were removed from her care due to the depression she suffered after her mother died and not her cognitive limitations as noted in the evaluations. She asserts that she no longer suffers from depression and therefore she is capable of taking care of her children.

Contrary to respondent's assertion, respondent's cognitive limitations and inappropriate discipline of her children, as well as her depression, factored into the removal of her children. Unchallenged finding of fact 64 shows that respondent's "lack of judgment and [her] inability to meet the children's needs or to keep the children or her safe" were conditions which led to the children's status as neglected and dependent juveniles. Dr. Poston testified at the termination hearing that respondent's "[r]easoning and judgment and insight were all impaired[,] " which was not unusual given respondent's

low average cognitive function. Further, Ms. Zhiss testified that people like respondent, who have been diagnosed with Down's Syndrome, are easily manipulated; and that respondent was manipulated by her aunt and cousin to physically abuse her children.

Respondent next asserts that she is capable of taking care of her children because she obtained a nursing assistant certificate and is currently a caretaker for an Alzheimer's patient. However, Dr. Poston concluded in her evaluation:

Given her diagnosis of Borderline Intellectual Functioning and her communication during interviews, it is likely that [respondent's] capacity for abstract thinking is limited. While she is capable of maintaining a routine job and managing activities of daily living, it is likely that judgment and insight, problem-solving, and day-to-day strategies for coping with stressors are likely to be impaired for this client as a result of this limitation.

Although respondent is capable of obtaining a job, as the trial court acknowledged in finding of fact 41, the trial court also found that respondent's diagnosis of Down's Syndrome and her borderline intellectual function affects her ability to parent. Unchallenged findings of fact 36 and 59 show that at the time of the termination hearing, respondent may have been able to take care of herself, but she did so with the help of others for

"housing, shelter, and transportation assistance." Thus, respondent's low average cognitive function and Down's Syndrome diagnosis makes it difficult for respondent to independently care for herself, let alone her children. We hold the foregoing evidence supports the court's findings of fact, which in turn support the court's conclusion of law, that grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6).

Having affirmed termination of parental rights on one ground, we need not address respondent's arguments concerning the other two grounds utilized by the court to terminate her parental rights. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

Affirmed.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).