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NO. COA14-536  
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

IN THE MATTER OF:

Mecklenburg County  
No. 12 JT 271

A.J.R.

Appeal by respondent from order entered 16 January 2014 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 20 October 2014.

*Twyla Hollingsworth-Richardson for petitioner-appellee Mecklenburg County Department of Social Services.*

*Poyner Spruill LLP, by Shannon E. Hoff, for guardian ad litem.*

*Mark L. Hayes for respondent-appellant.*

HUNTER, Robert C., Judge.

Respondent, the mother of the juvenile A.J.R.<sup>1</sup>, appeals from an order terminating her parental rights. After careful review, we affirm.

**Background**

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<sup>1</sup> To protect the identity and privacy of the minor child, we have used the child's initials in the opinion.

On 4 May 2012, the Mecklenburg County Department of Social Services, Youth and Family Services ("DSS") filed a petition alleging that A.J.R. was a neglected juvenile. DSS stated that on 11 April 2011, it received a child protective services report ("CPS report") alleging that respondent and the child had tested positive for marijuana. Respondent admitted to using marijuana daily throughout her pregnancy until just three weeks prior to the birth of the juvenile. DSS received another CPS report on 10 August 2011. DSS stated that respondent and A.J.R.'s father ("Mr. R.") were driving in a vehicle with the juvenile when it was stopped by police for having a fictitious tag. Police reported that the car smelled of marijuana and both parents appeared impaired. DSS alleged that A.J.R. was in the car, and when asked, respondent told police that A.J.R. was her sister's child. Respondent later admitted lying to officers due to her recently closed case stemming from the 11 April 2011 CPS report.

DSS received another CPS report concerning the juvenile on 11 October 2011. This report indicated that Mr. R. punched respondent in the face and head several times with his fist. Respondent was reportedly afraid to leave the apartment due to fear of further violence by Mr. R., but left when Mr. R. took a shower. Mr. R. was charged with assault on a female and false

imprisonment. Respondent entered a safety plan with DSS, and agreed to attend a court hearing on 23 March 2012 and to engage in services with the Women's Commission. Respondent attended the court hearing and obtained a restraining order, but did not engage in services with the Women's Commission.

Mr. R. was released on bond and, on 14 April 2012, went to the maternal grandmother's home where respondent was residing with the juvenile. Respondent and the juvenile left with Mr. R. in violation of the restraining order and the safety plan. Their whereabouts were unknown until they appeared together at a criminal court hearing with Mr. R. on 3 May 2012. Mr. R. was taken to jail. A non-secure custody order was entered granting DSS custody of the juvenile. On 31 December 2012, A.J.R. was adjudicated neglected pursuant to stipulations entered into by respondent. A.J.R. was placed in foster care.

An order was entered on 27 June 2013 following a permanency planning review hearing held on 2 May 2013. The court found that there was a "pattern of violence" that placed respondent and the juvenile at risk. The court further found that respondent's "lack of engagement and dishonesty has precluded her developing an understanding of the cycle of violence[.]" The court noted that respondent "accepted more than 100 phone

calls from [Mr. R.]” while he was in prison and “has shown a commitment of protecting him from responsibility of the act of domestic violence against her.” The court also found that respondent failed to cooperate with the district attorney concerning kidnapping charges she leveled at Mr. R., and “exhibited a total disregard for the Order of the Court and attempts to protect her and her child.” The court determined that no progress had been made in addressing the issues that led to the juvenile’s placement. Accordingly, the court ceased reunification efforts and changed the permanent plan for the juvenile to adoption with a concurrent plan of custody with a relative.

On 3 July 2013, DSS filed a motion to terminate respondent’s parental rights. DSS alleged grounds existed to terminate respondent’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), (2) (failure to make reasonable progress), (3) (failure to pay a reasonable portion of the cost of care), and (7) (abandonment).

Another review hearing was held on 29 July 2013. In the order filed 30 September 2013, the trial court found that respondent indicated that her last contact with Mr. R. was two weeks prior and she had “decided not to see him anymore.” The

court expressed hope that respondent was finally “beginning to understand her relationship with [Mr. R.] is an abusive relationship and that she will accept the resources available to her to create safety[.]” The court expressed its disappointment, however, that it had “taken 16 months and that the mother and her family has approached this process with such resistance.” The court stated that the permanent plan for the juvenile would be adoption with a concurrent plan of guardianship.

On 16 January 2014, the trial court entered an order terminating respondent’s parental rights after concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). Respondent appeals.

### **Arguments**

We first consider respondent’s argument that the trial court erred by concluding that grounds existed to terminate her parental rights. We disagree.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). “The standard of appellate review is whether the

trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied, appeal dismissed*, 353 N.C. 374, 547 S.E.2d 9, 10 (2001)).

In the instant case, the trial court concluded that grounds existed to terminate respondent's parental rights based on neglect. N.C. Gen. Stat. § 7B-1111(a)(1). "Neglected juvenile" is defined in N.C. Gen. Stat. § 7B-101(15) 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.

N.C. Gen. Stat. § 7B-101(15) (2013). "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). Where, as here, a child has been removed from the parent's custody before the termination hearing, and the petitioner presents evidence of prior 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." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). Additionally, the determination of whether a child is neglected "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." *In re McLean*, 135 N.C. App. 387, 396, 521 S.E.2d 121, 127 (1999).

Here, the trial court first made substantial findings of fact concerning the adjudication of neglect. The trial court then made the following findings concerning respondent's actions occurring after the adjudication of neglect:

15. The maternal grandmother [], the maternal aunt [], and the respondent mother violated the orders of this Court and contributed to placing [A.J.R.] at risk. During the two months [A.J.R.] was placed in the care of her maternal grandmother's home, the maternal grandmother completely disregarded the safety plan ordered by the Court by allowing unapproved contact by [Mr. R.] and the respondent mother with the juvenile during that time.

16. During the time [A.J.R.] was placed with the maternal grandmother [], the mother and grandmother engaged in criminal conduct with the juvenile in their care. In August 2012, the maternal grandmother, the maternal aunt [], and the respondent mother had acted

in concert to voluntarily conceal more than \$300 of merchandise at a local Wal-Mart, placing themselves at jeopardy of being arrested and leaving [A.J.R.] without a caregiver there.

17. During the hearing in the underlying proceedings, the respondent mother vehemently denied the allegations of the Wal-Mart incident. The Court scheduled additional hearings to litigate the allegations because the mother vehemently denied them. The video footage from the Wal-Mart security camera revealed the family members had in fact concealed merchandise and that [A.J.R.] was present with the family members during the incident.

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19. The Court held hearings from 9 May 2012 through 29 July 2013 and over that entire period the respondent mother denied to [DSS], the Court, and her counselor at the Women's Commission that she continued to be in a relationship with her batterer. She admitted in this proceeding that she lied to the court and had in fact continued a relationship with [Mr. R.] until some point in July 2013.

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27. The respondent mother's criminal record includes convictions for injury to real property, common law forgery, common law uttering, and larceny. The respondent mother has at least five convictions since 2006 for theft-related offenses.

28. The respondent mother has continued to have a relationship with [Mr. R.]. [Respondent] attempted to have the 50B against [Mr. R.] dismissed in June 2012.



Despite the existence of a 50B protective order the respondent mother was found at the home of [Mr. R.] on 2 April 2013, when he was arrested on outstanding warrants by the Charlotte-Mecklenburg Police. The respondent mother was charged with assault on 1 April 2013, the result of an altercation with another female with whom the father is involved. The respondent mother had an open laceration on her arm as a result of the altercation.

29. Violations of the no-contact order provisions continued after 2 April 2013.

30. The Court took judicial notice at the 2 May 2013 hearing that violence between the respondent parents is not a random act; it is a pattern of behavior. There has been an ongoing pattern of violence which escalated to a degree that placed the mother at risk of death. [Mr. R.] kidnapped [respondent] and she thought her life was threatened.

31. The mother admits that [A.J.R.] was exposed to child abuse.

32. The respondent mother has demonstrated a lack of engagement and dishonesty, that the respondent mother has not developed an understanding of the cycle of violence, and that the respondent mother remains at risk of violence from [Mr. R.].

33. In spite of the risk of violence that exists to the respondent mother, she has accepted over 100 phone calls from [Mr. R.], and continues to show a commitment of protecting him when he commits or is accused of committing acts of domestic violence against her.

34. The respondent mother failed to cooperate with the assistant district

attorney assigned her second degree kidnapping case involving [Mr. R.] as the perpetrator, which she alleged to occur.

35. The respondent mother has exhibited a total disregard of the orders of the Court, and its attempts to protect her and [A.J.R.], or any child in her care.

36. The respondent mother and [Mr. R.] both exhibit patterns of conduct that show disregard of [the] law, the rights of others, the rights of the child, and have continued to expose themselves to the risk of arrest since this matter has been before the Court.

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42. The respondent mother has described her relationship with [Mr. R.] "as over" and that she testified in this proceeding that she first believed it was safe to terminate this relationship while he was attempting to elude arrest on his probation violation.

43. The Court finds it significant that there is an unaddressed issue of substance abuse with the respondent mother. The respondent mother admitted during this proceeding and as outlined in prior orders that she used marijuana daily during her pregnancy and that she used marijuana as recently as 16 July 2013.

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45. The respondent mother's progress has been minimal. She has articulated an intention to be removed from the violent relationship with [Mr. R.] for the last three years, but through her testimony and continued relationship with [Mr. R.] she has

continued to minimize the risk that domestic violence poses to her daughter.

46. The respondent mother has not demonstrated that she recognizes the risk to [A.J.R.] being placed in the presence of [Mr. R.] and the risk to herself without [Mr. R.] having made any demonstrable progress in changing the patterns of violence and the use of violence in intimate partner relationships.

47. That the respondent mother has admitted during this proceeding that over the course of the 18 months that [A.J.R.] has been in custody that she has repeatedly lied to the Court about her living arrangements, the nature of her relationship with [Mr. R.], the comprehension and impact of domestic violence on her own safety, and on the safety of [A.J.R.].

Respondent's challenges to the findings of fact are based on her claim that she terminated her relationship with Mr. R. in July 2013, and no evidence was presented that the relationship continued after July 2013. Respondent contends that July 2013 constituted a turning point in her relationship with Mr. R., and the court's findings of fact are outdated. The court, however, was free to reject this contention. See *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (It is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn

therefrom." ). Moreover, we note that there is no specific timeframe in which the trial court can consider evidence concerning N.C. Gen. Stat. § 7B-1111(a)(1). Cf. N.C. Gen. Stat. § 7B-1111(a)(2) (twelve month lookback provision in determining willful failure to correct conditions); (3) (failure to pay child support in the six months preceding the filing of the petition); and (7) (abandonment of the juvenile for the six months immediately preceding the filing of the petition). Considering respondent's lengthy history of lying to the court and DSS, her lengthy pattern of dishonest behavior, the repeated domestic violence and protection of her abuser, and the fact that this alleged "turning point" occurred after the filing of the motion to terminate her parental rights, we conclude there was sufficient evidence to support the trial court's findings of fact. Based on these findings, we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate respondent's parental rights.

Respondent additionally argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate her parental rights. However, because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to support the trial court's order, we

need not address the remaining ground found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

**Conclusion**

Based on the foregoing reasons, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).