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NO. COA14-768  
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF: Gaston County  
No. 10 JT 200  
C.M.W.

Appeal by respondent from order entered 11 April 2014 by Judge James A. Jackson in Gaston County District Court. Heard in the Court of Appeals 9 December 2014.

*Elizabeth Myrick Boone for petitioner-appellee Gaston County Department of Social Services.*

*Leslie Rawls for respondent-appellant father.*

*Parker Poe Adams & Bernstein LLP, by Matthew W. Wolfe, for guardian ad litem.*

DILLON, Judge.

Respondent, the father of the juvenile Chris<sup>1</sup>, appeals from an order terminating his parental rights. After careful review, we affirm.

On 9 June 2010, the Gaston County Department of Social Services ("DSS") filed a petition alleging that Chris, as well

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<sup>1</sup> A pseudonym.

as his two siblings, were dependent and neglected juveniles. At the time the petition was filed, Chris resided with his mother, and Respondent's paternity had not been established. DSS alleged that the mother had neglected all the juveniles' hygiene, noting that they still wore diapers which were infrequently changed and leaked feces and urine. DSS further alleged that the juveniles did not receive sufficient food, noting that while the family did receive food stamps, the mother did "not consistently spend this money on food, shelter or clothing for the juveniles." DSS also claimed that the mother improperly medicated the juveniles to ensure that they slept. Finally, DSS alleged that the family was homeless and had no means of obtaining shelter. DSS obtained non-secure custody of Chris and his siblings.

Subsequently, Chris' mother named Respondent as the father of Chris, and a juvenile summons was sent to him. His paternity was confirmed on 20 October 2010 through DNA testing.

On 31 March 2011, Chris was adjudicated a neglected and dependent juvenile, and Respondent was adjudicated to be Chris' biological father. A dispositional order was entered on 12 May 2011, in which the trial court declined to place Chris with Respondent. The trial court noted that a home study had been

conducted on Respondent's home, but placement was not recommended because Respondent and his wife were unemployed, already had three other children in the home, and were reliant on the income of the paternal grandparents who also lived in the home. Additionally, Respondent's home was not "properly furnished and needed significant cleaning." The trial court also expressed "concerns regarding [Respondent's] diagnosis of Bi-Polar Disorder and his level of compliance with his mental health medications." It ordered that Respondent "must be compliant with his mental health medications." (Emphasis in original.)

An order was entered on 1 November 2011 following a review hearing held on 6 September 2011. The trial court stated that Chris was supposed to begin a trial home placement with Respondent in August, but did not begin the placement due to the condition of Respondent's home. Specifically, the trial court found that DSS had conducted a surprise visit of Respondent's home and found it unsuitable for placement of the juvenile due to the presence of "animal feces and urine throughout the house on the floor, furniture, and clothes."

On 1 November 2011, another review hearing was held. In an order entered 17 January 2012, the trial court noted that it had

previously ordered that Chris begin a trial home placement with Respondent so long as Respondent met certain conditions. Among these conditions were: (1) that the paternal grandmother's oxygen tank not be in the home; (2) that the paternal grandmother not smoke in the home except for in her bedroom; and (3) the home should be free of dog feces. Respondent was informed that the violation of these conditions would lead to removal of the juvenile from his home.

On 20 October 2011, DSS visited Respondent's residence. The oxygen tank was still in the home; the paternal grandmother admitted to smoking in the home outside of her bedroom; and there were feces found on the bathroom floor. Accordingly, Chris was removed from the home.

Following a hearing on the matter, on 20 February 2012 the trial court entered an order, finding that Respondent was unemployed, residing in the home of the paternal grandmother with his wife and three children, his wife was expecting a fourth child, he missed a therapy appointment, and had not been under psychiatric care for his bipolar diagnosis since June 2011. The trial court made similar findings in another order entered on 2 August 2012, and, additionally, found that Respondent had a psychological evaluation with his physician but

had missing a total of five appointments and the report was incomplete.

On 1 March 2013, DSS filed a petition 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), (5) (failure to legitimate), and (7) (abandonment) (2013). On 11 April 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.

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Respondent argues that the trial court erred by concluding that grounds existed to terminate his 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) (citation omitted).

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 found that Chris was adjudicated neglected on 8 February 2011. Regarding Respondent's actions occurring after the adjudication of neglect, the trial court found as fact:

47. Respondent father entered into a case plan with the Department and he began to visit the juvenile sporadically prior to knowing if he was the biological father of the juvenile. At the time when Respondent father became involved, the Department had concerns with Respondent father, in that he was not employed, he had mental health treatment issues, and had no bond with the juvenile.

. . . .

49. At one point the Court considered a Trial Home Placement of the juvenile with Respondent father at Respondent father's mother's residence. Respondent father lived at that residence with his mother, step-father, wife, and his other children. A social worker went to this residence and found the residence to be completely unsanitary, in that there was animal feces and urine throughout the home, the children's and Respondent father's feet were black from the floors being filthy, glass was in the play area, and the carpet was

stained with urine.

50. Due to the conditions of Respondent father's residence, even after the Court gave Respondent father an opportunity to clean the residence, which he failed to do, the Trial Home Placement was unsuccessful.

51. Respondent father has never demonstrated the ability to maintain a residence with a minimal level of sanitary conditions.

. . . .

55. By Respondent father's own admission, Respondent father had no contact with the juvenile, nor sent nothing [sic] to or for the juvenile, during the six (6) months preceding the filing of the Petition to Terminate Parental Rights. . . .

56. Since Respondent father's move to Kentucky, his children were removed from the home and Respondent father is currently incarcerated. Respondent father called the Clerk of Court in the county that he had court dates scheduled to inquire as to what times he would need to be in court. At the time, he was not taking his medication and he became exasperated and stated to the individual that Respondent father was speaking with to tell "Robbie that when I see him on the street that I'm going to kill him." Robbie was a Kentucky judge and Respondent father was arrested in April 2013 for making the threat and remains incarcerated until at least October or November of 2014.

57. Since October of 2010, Respondent father has not been able to procure stable housing or employment.



58. Respondent father did nothing to secure reasonable employment so that he could provide for his family and/or the juvenile except for some brief work he did for his landlord.

59. Respondent father has been diagnosed with Bi-polar disorder and other mental health issues. This has caused Respondent father to have extreme outbursts and cannot control his temper. He has failed to follow through with proper treatment, in that he has not maintained contact with his doctor and does not take his medication as prescribed. Respondent father has failed to follow through with the recommendations of his Psychological Evaluation, in that he failed to make his appointments with the evaluator and the evaluation could not be completed.

. . . .

62. The initial concerns that the Department had regarding Respondent father's ability to parent the juvenile still remain and have actually deteriorated, in that Respondent father remains unemployed, has not actively sought treatment for his mental health conditions, has not bonded with the juvenile, and continued to live in unsanitary conditions until his incarceration.

63. Respondent father's other four children have been taken from his custody by the State of Tennessee since the juvenile in this proceeding has been in the Department's custody.

64. Respondent father has failed to correct the concerns of the Department and the Court, such that neglect would continue if the juvenile was returned to his care. The

neglect has continued through the date of the filing of this petition and is not due solely to the poverty of Respondent father.

Respondent does not challenge these findings of fact, and they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). These findings show that the conditions that led to Chris' removal from Respondent's custody still remained as Respondent still did not have any job or income, had not provided a residence for Chris with a minimal level of sanitary conditions, had failed to follow through with proper treatment of his mental health issues, had moved out of state, and had not had contact with Chris in six months prior to the hearing.

Respondent contends that poverty was a significant factor in this case, and asserts that poverty alone is not sufficient to support a termination of parental rights based on neglect. While it is true that Respondent's parental rights may not be terminated if the only reason he is unable to care for his children is his poverty, see N.C. Gen. Stat. § 7B-1111(a)(2), the trial court did not base its conclusion of neglect on his poverty. While his poverty may have impacted his ability to visit the juvenile, the record indicates that his inability to maintain a clean home and his failure to follow treatment

recommendations regarding his mental health issues were not the exclusive result of his low income. Thus, we are unpersuaded by Respondent's argument.

Based on the trial court's unchallenged findings of fact, 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 his 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. Accordingly, we affirm.

AFFIRMED.

Judge STROUD and Judge DIETZ concur.

Report per Rule 30(e).