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NO. COA14-826
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

Wake County
No. 12 JT 219

N.D.S.

Appeal by respondent from orders entered 30 September 2013 and 5 May 2014 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 24 November 2014.

Roger A. Askew for petitioner-appellee Wake County Human Services.

Parker Poe Adams & Bernstein, LLP, by Sye T. Hickey, for guardian ad litem.

Windy H. Rose for respondent-appellant mother.

DIETZ, Judge.

Respondent mother appeals from orders ceasing reunification efforts and terminating her parental rights to N.D.S. ("Nate").¹ As explained below, Respondent's persistent refusal to address her mental health needs, to find stable, suitable housing, to attend parenting and anger management courses, and to address

¹The parties agreed to the use of this pseudonym.

her substance abuse problems, all support the trial court's decisions to cease reunification efforts and terminate Respondent's parental rights. Accordingly, we affirm.

Facts and Procedural History

On 31 August 2012, Wake County Human Services obtained non-secure custody of Nate, who was two and one-half weeks old, and filed a juvenile petition asserting that he was neglected. The petition alleged that Respondent used a knife during a domestic dispute with her brother, an incident that occurred in Nate's presence and resulted in criminal charges against both siblings. The petition also cited Respondent's refusal to accept assistance with her "limited parenting skills," her disruption of a safety placement arranged for Nate by the county agency, and her untreated mental health issues.

The district court entered an adjudication of neglect on 6 November 2012, based on stipulated facts consistent with the allegations raised in the petition. At disposition, the court ordered Respondent to comply with the provisions of her Family Services Agreement. That agreement required Respondent to attend visitation; follow all recommendations of her psychological evaluation and substance abuse assessment; obtain anger management treatment; attend parenting classes and

"demonstrate learned material during interactions with" Nate; and obtain and maintain stable housing and employment that were sufficient for herself and her child.

After permanency planning and review hearings held in January, June, and August of 2013, the district court ceased efforts toward reunification and changed Nate's permanent placement plan to adoption by order entered 30 September 2013. Respondent filed timely notice preserving her right to appeal the ceasing of reunification efforts.

Wake County Human Services filed a motion to terminate Respondent's parental rights on 6 January 2014, based on neglect and her failure to make reasonable progress in correcting the conditions that led to Nate's placement outside of the home in August 2012. See N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2013). The district court heard evidence on 26 March 2014 and entered an order on 5 May 2014 holding that there were grounds for termination and further concluding that termination of Respondent's parental rights was in the best interests of the child. Respondent then timely appealed the termination order

and the earlier order ceasing reunification efforts.²

Analysis

I. Grounds to Cease Reunification Efforts

Respondent first claims the district court erred in ceasing reunification efforts under N.C. Gen. Stat. § 7B-507(b)(1) (2013). Respondent does not challenge the trial court's findings of fact, but argues that the conclusion to cease reunification was erroneous because she "had substantially complied with her case plan in order to reunite with Nate" at the time of the 23 August 2013 review hearing.

"A trial court may cease reunification efforts upon making a finding that further efforts 'would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time.'" *In re C.M.*, 183 N.C. App. 207, 214, 644 S.E.2d 588, 594 (2007) (quoting N.C. Gen. Stat. § 7B-507(b)(1)). Though characterized by statute as a finding, "the determination that grounds exist to cease reunification efforts under [N.C. Gen. Stat.] § 7B-507(b)(1) is in the nature of a conclusion of law that must be

² We note that the putative father named by Respondent denied paternity of the child and refused to participate in these proceedings. Although the district court also terminated the parental rights of the putative father, he is not a party to this appeal.

supported by adequate findings of fact." *In re E.G.M.*, ___ N.C. App. ___, ___, 750 S.E.2d 857, 867 (2013).

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. at 213, 644 S.E.2d at 594. Uncontested findings of fact are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Respondent argues that this case is controlled by *In re Eckard*, 148 N.C. App. 541, 559 S.E.2d 233 (2002). In *Eckard*, this Court reversed a trial court order ceasing reunification efforts. But the facts of *Eckard* are readily distinguishable. The evidence in that case showed that the mother "has grown and matured to a level as to not be a danger to [the child]"; that she "continues to remain employed, pay child support, and visit her child regularly"; and that she "has done everything requested by DSS," "is following her case plan," and has "no severe mental health issues that would interfere with her ability to parent." *Id.* at 545, 559 S.E.2d at 235.

Here, by contrast, the trial court found precisely the opposite facts in each of these areas, and Respondent does not challenge these findings. For example, the trial court found that although Respondent had completed anger management classes, she remained "unable to demonstrate an ability to remain calm," such that her "grandparents have indicated that they are afraid of [Respondent]" and "[l]aw enforcement continues to be called to the residence because of domestic disturbances." Respondent also obtained a psychological evaluation, but failed to comply with its recommendations by attending regular therapy or by obtaining a psychiatric evaluation to determine whether medication was indicated for her mental health issues. Fifty-one weeks after Wake County Human Services assumed custody of Nate, Respondent was working two part-time jobs, but had yet to obtain housing suitable for Nate and was living with her grandparents. Respondent had also "continued to test positive for marijuana although the last [three] tests [showed] decreasing levels of the drug." While Respondent had improved her bond with Nate through visitation, her "behavior has been such that the social worker has not felt comfortable either leaving the visitation room during visits or recommending any unsupervised visitation for the mother."

In sum, although we acknowledge that Respondent had shown some progress with her Family Services Agreement at the time of the 23 August 2013 review hearing, serious deficiencies remained that support the trial court's decision to cease reunification efforts. In particular, as the trial court found, Respondent failed to address her mental health needs, her lack of stable housing, her anger management issues, and her substance abuse problems. Accordingly, the district court did not err in concluding that reunification efforts "would be futile or inconsistent with [Nate]'s safety and need for a safe home within a reasonable time." See *In re M.J.G.*, 168 N.C. App. 638, 649-50, 608 S.E.2d 813, 819-20 (2005) (upholding cessation of reunification efforts despite mother's claim of progress on her case plan). As a result, the trial court did not abuse its discretion in electing to cease reunification efforts pursuant to N.C. Gen. Stat. § 7B-507(b)(1).

II. Grounds for Termination of Parental Rights

Respondent next claims that there were insufficient grounds to support termination of her parental rights. In reviewing the termination of parental rights under N.C. Gen. Stat. § 7B-1109(e), we must determine whether the district court's findings of fact are supported by clear, cogent, and convincing evidence,

and whether the findings support the court's conclusions of law. *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). "If there is competent evidence, the findings of the trial court are binding on appeal," *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003), as are all uncontested findings. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. We review conclusions of law *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

The district court adjudicated grounds for termination of Respondent's parental rights based on her neglect of Nate under N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is one who, *inter alia*, "does not receive proper care [or] supervision" from the juvenile's parent or who "lives in an environment injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15). In order to support an adjudication under N.C. Gen. Stat. § 7B-1111(a)(1), "[n]eglect must exist at the time of the termination hearing." *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d 725, 729 (2007). Where "the parent has been separated from the child for an extended period of time, the petitioner must show that the parent has neglected the child in the past and that the parent is likely to neglect the child in the future." *Id.* The determination that a child is neglected is a

conclusion of law. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997).

We conclude that the uncontested findings in the termination order establish grounds to terminate Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). In addition to acknowledging Nate's prior adjudication of neglect on 7 November 2012, the court found the following:

18. During the first nine to twelve months . . . the child was placed in the custody of [Wake County Human Services], the social worker found reasoning and communicating with the mother difficult. . . . Despite the social worker's efforts to schedule assessments or appointments for services around regularly scheduled visits to avoid the requirements of extra travel and interference with the mother's work schedule, the mother often declined to attend those assessments or appointments. The mother was often unwilling to provide information . . . that would have enabled the social worker to provide assistance or allow the mother to meet the requirements of the Court's orders.

. . . .

20. The relative with whom the mother had a violent altercation in August 2012 . . . does not currently live with the mother. Concerns remain, however, regarding possible continuing family discord in the home. The mother has admitted that law enforcement has been called to the home on more than one occasion when the mother was present since the child was removed. . . . In September 2013, [Nate's] great-grandmother with whom

the mother lives requested that the mother be taken off the lease with the Housing Authority and expressed fear of the mother. Within a few days of this request, the great-grandmother called the Housing Authority and requested that the mother be placed back on the lease. The mother could be heard yelling and screaming in the background during the call. The mother continues to live with her grandparents. Family discord which could have a detrimental effect on the child remains a concern despite the mother's completion of the anger management curriculum.

21. Prior to moving, the mother did not take necessary steps to make the residence appropriate for the child. She moved from that residence in September 2013 and lived in various places until moving to her current residence in November 2013. The mother provided no evidence regarding the suitability of this residence. The prior residence was infested with bedbugs. The family did not comply with the landlords instructions regarding the treatment of bedbugs. When the mother moved out, she lived at a hotel and moved items from the residence into storage. The social worker has not assessed the condition of this housing because of a concern that furniture or other items from the prior housing may be present in the new residence.

22. The mother has not had stable employment and presented no evidence as to what her income is currently. The mother provided paystubs for a period of three and one-half months that she was employed at a local Wendy's restaurant. . . . The mother left that position because she could not "deal with" going back and forth between her home and the restaurant. She indicated that she worked at that position to earn money to

meet her child support obligation. The mother claims to be working at Hardees but provided no verification.

23. The mother completed a parenting education course but has been unable to consistently demonstrate the learned skills during her visits with the child. She continues to need assistance during visits in order for the child to remain safe and does not accept redirection from the social worker. She sets no limits for the child and brings no snacks, juice or toys for the child. She has not demonstrated that she understands the developmental needs of the child. She does not know his clothes sizes or what size bed he needs. She has failed to monitor his movements so that he does not hurt himself during visits and has failed to demonstrate that she understands what actions or arrangements would be necessary to provide for his safety. . . . The mother's attendance at visits was not consistent. The mother has been unable to accept parenting coaching by the social worker and failed to take advantage of one-on-one parenting coaching in visits offered by the parenting instructor. The parenting coaching sessions were stopped after the mother failed to attend several sessions. . . .

24. The mother completed a psychological evaluation in November 2012 but has not complied with the recommendations and/or failed to comply in a timely manner such that the compliance was not effective in correcting the conditions being addressed.³

³Respondent's evaluation, completed on 16 November 2012, produced an Axis I diagnosis of Major Depressive Disorder, Single Episode, Mild (Rule Out Bipolar Disorder), and an Axis II diagnosis of Personality Disorder Not Otherwise Specified with paranoid and anti-social features. Although Respondent had no

The scheduling of the interpretive appointment was difficult and required three (3) attempts before the mother attended the appointment. . . . [T]he mother was unable to accept the comments and explanation being provided by the evaluator and, after becoming argumentative, asked if she could leave. She was not able, therefore, to benefit from the interpretive session. The mother did not comply with the recommended medication management until October 2013 and has not taken the prescribed medication on a regular basis despite her admission that it made her feel better and the opinion of the evaluator that the mother needed assistance to stabilize her emotions. The mother completed an anger management class but has not been able to demonstrate the skills learned during the class as evidenced by continued family discord in her home and her interaction with the social worker. The mother has participated inconsistently in individual counseling. As of June 26, 2013, she had attended only sixty (60%) per cent of the scheduled sessions despite the existence of significant mental health conditions as stipulated at the adjudication. Between November 2013 and January 2014, the mother did not seek to participate in individual counseling. She offered no evidence that she was participating in individual counseling at the time of the [termination] hearing.

Based on these findings, the trial court determined "[t]hat the mother's lack of compliance with the [c]ourt's orders and the Out of Home Family Services Agreement demonstrate that there is

cognitive limitations affecting her ability to parent Nate, the psychologist noted that her personality disorder "makes [Respondent] less likely to be receptive to feedback from others and make behavioral changes."

a reasonable probability of a repetition of . . . neglect if the child were to be returned to her care.”

Respondent does not challenge the trial court’s factual findings, but argues that the trial court’s adjudication of neglect was erroneous because she “substantially completed her case plan.” She contends that, because her “mentally unstable brother” moved out of her residence within two months of Nate’s removal from her home, she successfully “corrected the environment that gave rise to Nate’s ‘neglect.’” As for her positive drug screens, Respondent asserts that drug testing was not included in the court’s initial dispositional order but was added by the court in January of 2013.

We reject these arguments and hold that the trial court’s findings of fact support its conclusion that grounds exists to terminate Respondent’s parental rights based on neglect. The trial court found that Respondent had both parenting issues and mental health issues that could lead to neglect in the future, and that Respondent persistently failed to address her anger and mental health issues—notably by refusing to attend parenting lessons and refusing to regularly take her mental health medication.

The court also found that Respondent continued to lack

suitable housing and employment and was unable to demonstrate even a basic understanding of the conduct and planning necessary to care for Nate if he were returned to her. See *In re M.N.C.*, 176 N.C. App. 114, 123, 625 S.E.2d 627, 633 (2006); see also *In re K.D.*, 178 N.C. App. 322, 329, 631 S.E.2d 150, 155 (2006) (affirming adjudication of neglect based on mother's "struggles with parenting skills, domestic violence, and anger management, as well as her unstable housing situation"). These findings support an adjudication of neglect. With respect to the positive drug test results, we note that random drug screening was one of the recommendations of Respondent's psychological evaluation, and that she agreed to abide by those recommendations as part of her original Family Services Agreement. In any event, the trial court's fact findings support its conclusion of neglect even without considering Respondent's positive drug test results. Accordingly, we affirm the adjudication of neglect under N.C. Gen. Stat. § 7B-1111(a)(1). In light of this ruling, we need not review the second ground for termination found by the court. *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.

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Judges STROUD and DILLON concur.

Report per Rule 30(e).