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NO. COA14-866  
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

Z.M.

Orange County  
No. 11 JT 2

Appeal by respondent-mother from order entered 12 May 2014 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 3 December 2014.

*Samantha H. Cabe for petitioner-appellee Orange County Department of Social Services.*

*Mary McCullers Reece for respondent-mother, appellant.*

*Michael N. Tousey for guardian ad litem,*

DILLON, Judge.

Respondent appeals from a trial court's order terminating her parental rights to the minor child, Zeb<sup>1</sup>. For the following reasons, we affirm the trial court's order.

I. Background

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<sup>1</sup> A pseudonym.

On 6 January 2011, the Orange County Department of Social Services ("DSS") filed a petition alleging that Zeb was a neglected and dependent juvenile, alleging that Respondent was unable to provide housing for Zeb, that Zeb went to school dirty and hungry, that Respondent appeared to have mental health problems, and that there was a risk of harm if Zeb was allowed to continue to be in the care and custody of Respondent. DSS obtained non-secure custody of Zeb. On 12 January 2011, DSS filed an amended petition alleging that Zeb was also an abused juvenile, after discovering that Zeb had a fractured finger.

On 14 June 2011, the trial court entered an order adjudicating Zeb as neglected and dependent, finding that Zeb frequently went to school dirty and hungry, and Respondent had no transportation, no stable residence, no means of providing for Zeb, was incarcerated on charges of child abuse and assault on a child after she hit Zeb with a rolling pin after he had broken his glasses, and had issues of domestic violence with Zeb's sibling's father. The trial court also found that initially Zeb told the medical evaluator that he had broken his finger when he walked into a wall but later admitted that Respondent broke it and, during her first supervised visit, Respondent scolded Zeb and told him not to lie about the cause

of his broken hand. The trial court also found marks on Zeb's body, indicating a "significant suspicion for physical abuse/corporal punishment." The trial court left open the issue of whether Zeb was abused for future consideration. The trial court ordered Respondent to complete a parental competency evaluation, meet with a social worker to develop a case plan, enroll in parenting classes, make her medical and psychological records available, and refrain from discussing any aspect of the case with Zeb during visits.

Zeb remained in foster care under DSS custody, and DSS made efforts to reunify Respondent and Zeb. In its 28 February 2012 permanency planning order, the trial court found that the fact that Respondent had not acknowledged any responsibility for Zeb coming into DSS care or for his injury were barriers to reunification and ordered that DSS continue reunification efforts, along with a concurrent plan of adoption and termination of Respondent's parental rights.

On 11 April 2012, DSS filed a motion requesting the termination of Respondent's parental rights. DSS alleged grounds existed to terminate Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a) (1) (abuse and neglect) and (2) (failure to make reasonable progress). In a 19 November

2012 permanency planning order, the trial court found that DSS had filed a motion requesting termination of Respondent's parental rights, that further efforts to reunify or place the juvenile with Respondent would be futile, and that the best plan for the juvenile was adoption, and ordered DSS to proceed with the termination of Respondent's parental rights.

On 29 May 2013, the trial court entered a permanency planning order, noting that Respondent still took no responsibility for Zeb's injury and the parental competency evaluation performed on Respondent questioned her "ability to parent the juvenile." The DSS report referred to in this order noted that in the parental competency evaluation, the psychologist noted that Respondent "lacks insight and awareness into her own behavior and problems" and that she "tended to minimize her faults and deny psychological problems" and she appeared to "have symptoms that are best explained by Borderline Personality Disorder (BPD)." The psychologist further noted that Respondent's "difficulties in relationships, mood instability, paranoia, and lack of self-awareness have interfered with her parenting and ability to cooperate with DSS."

Following a hearing, on 12 May 2014, the trial court entered an order terminating Respondent's parental rights based on N.C. Gen. Stat. § 7B-1111(a) (1) (abuse and neglect) and (2) (failure to make reasonable progress). Respondent timely filed her notice of appeal.

## II. Analysis

On appeal, Respondent argues that the trial court erred in (1) concluding that grounds existed to terminate her parental rights based on her failure to make reasonable progress to correct the conditions that led to Zeb's removal; (2) grounds existed to terminate her parental rights based on neglect; or (3) grounds existed to terminate her parental rights based on abuse where there was no prior adjudication of abuse and no finding of the likelihood of abuse in the future. We find the issue of neglect to be dispositive.

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).

"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 Zeb was adjudicated neglected on 27 April 2011 based on allegations that Respondent was unable to provide housing for Zeb and that Zeb went to school dirty and hungry. The trial court further found that after DSS took non-secure custody of Zeb it was discovered that he had a fractured pinky finger; that Zeb claimed the injury was caused by Respondent hitting him with a rolling pin; that Zeb kept this injury secret for two days; the injury was consistent with Zeb's explanation; during Respondent's first supervised visit with Zeb she scolded Zeb for lying and that he knew that she did not break his hand; and that Respondent stated Zeb's injuries were the result of him running into a door. Marks on Zeb's body discovered during a medical treatment and evaluation "raise[d] a significant suspicion for physical abuse/corporal punishment[,]" and further evidence supported this suspicion. Based on these allegations, DSS received custody of Zeb. Therefore, at the time of the termination, Zeb was not with Respondent but in DSS placement; and, accordingly, our focus is on the possibility of future neglect.

As to future neglect, the trial court found that "Respondent mother [had] never taken responsibility for [Zeb's] broken finger or admitted any wrongdoing" but rather blamed Zeb, accused him of lying and varied her explanation of how the injury occurred over time. The trial court further found that

24. Throughout the history of this case, there have been on-going concerns regarding Respondent mother's mental health. These concerns have resulted in parenting evaluation and psychiatric and psychological evaluations and assessments, some requested by [DSS] and some requested by Respondent mother. The court finds the evaluation completed by [Dr. Jones] to be credible, comprehensive and the most relevant to this proceeding.

After performing a parenting evaluation for Respondent, Dr. Jones diagnosed Respondent with having Borderline Personality Disorder and had exhibiting the symptoms of unstable relationships, emotional reactivity, inappropriate and intense anger, transient paranoid ideation, disorganized thinking, and an inconsistent sense of self-worth. In exhibiting some of these symptoms, the trial court found that during visits she would bring up the injury to Zeb in conversation and try to convince Zeb that he caused the injury, and make negative comments about Zeb's appearance, clothing, or his weight. Additionally, the trial court noted that Respondent had been



hostile to a series of social workers assigned to her case during her interactions with them, leaving hostile voicemails and making threats to them. The trial court's found that this diagnosis had a significant impact on Respondent's ability to parent:

33. Respondent told Dr. Jones that she did not have any weaknesses as a parent. She could not admit to any problems that are common and normal with most people and that most people are willing to acknowledge.

. . . .

35. According to Dr. Jones, Respondent mother's Global Functioning score of 50 indicates that Respondent mother has "serious" symptoms that affect her life in a "serious" way. Dr. Jones' opinion is based upon Respondent mother's history, her past and current involvement with DSS and her length of mental health treatment and whether treatment has made an impact on Respondent mother's functioning.

. . . .

46. Respondent mother's diagnosis of Borderline Personality Disorder and her attendant symptoms have impacted Respondent mother's ability to parent [Zeb] resulting in his neglect.

47. Referring to an article entitled *Mothers with Borderline Personality Disorder*, a 2006 article in the Graduate Student Journal of Psychology, Volume 8, by Andreas E. Lamont, Teachers College, Columbia University and in conjunction with her own evaluation of Respondent mother, Dr.

Jones opined that mothers with Borderline Personality Disorder can impede a child's development and are at a high risk of verbally and physically abusing their children.

While the heart of Respondent's case has always been her mental health issues and her inability to parent, we hold that these unchallenged findings support a conclusion that there was neglect and that there is the probability of a repetition of neglect. Specifically, we point to the findings concerning Respondent's injury to Zeb's finger; Respondent's ongoing persistence in not taking responsibility for Zeb's injury; her ongoing unresolved mental health issues, including her diagnosis of Borderline Personality Disorder; and the psychologist's expert opinion that a person with a diagnosis of Borderline Personality Disorder has "a high risk of verbally and physically abusing their children."

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 BRYANT and Judge DIETZ concur.

Report per Rule 30(e)