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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1081

Filed: 7 April 2015

IN THE MATTER OF:

R.W.

Dare County

No. 11 JT 44

Appeal by respondent from order entered 7 June 2014 by Judge Amber Davis in Dare County District Court. Heard in the Court of Appeals 16 March 2015.

Sharp, Michael, Graham & Baker, LLP, by Steven D. Michael, for petitioner-appellee Dare County Department of Social Services.

Sydney Batch for respondent-appellant mother.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, by J. Mitchell Armbruster, for guardian ad litem.

HUNTER, JR., Robert N., Judge.

Respondent, the mother of the juvenile Riley,¹ appeals from an order terminating her parental rights. After careful review, we affirm.

On 22 June 2011, the Dare County Department of Social Services (“DSS”) filed a petition alleging that Riley was an abused, dependent, and neglected juvenile. DSS stated that Riley was born with cocaine, opiates, and benzodiazepines in her system

¹ Riley is a pseudonym to protect the identity of the minor child.

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due to ingestion of these substances by respondent during pregnancy. DSS further stated that at the hospital, shortly after Riley's birth, respondent and the putative father acted contrary to the medical staff's safety instructions by "repeatedly plac[ing] the infant in the bed with them in the hospital room." DSS further claimed that "[t]he hospital staff continued to find the infant in the bed with the parents, even after they were repeatedly told it was unsafe for her to be there. At one point, the newborn infant was found by hospital staff face down in the bed." DSS obtained non-secure custody of Riley. On 14 October 2011, Riley was adjudicated neglected after respondent stipulated to the allegations in the petition.

A review hearing was held on 29 May 2012. The trial court found as fact that respondent refused to take either a hair follicle test or provide a urine specimen in May 2012. The trial court additionally found as fact that respondent had failed to attend a Permanency Planning Team Meeting on 15 May 2012 and had failed to acknowledge her need for mental health or substance abuse counseling. The trial court stated that respondent had "failed to demonstrate genuine interest in the welfare of [her] child as evidenced by [her] failure to communicate or respond to the foster parent or attend medical appointments." The trial court further found that, after eleven months, the issues that brought Riley into DSS's care had "not substantially changed." The court stated that respondent was "barely complying" with her case plan and had not cooperated with DSS. Accordingly, the trial court

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ceased reunification efforts. On 28 August 2012, the trial court changed the permanent plan for the juvenile to adoption.

On 2 October 2012, 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), and (3) (failure to contribute to the cost of care) (2014). The trial court heard testimony by the parties on eight separate occasions between 12 July 2013 and 15 May 2014. On 7 July 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) (neglect) and (2) (failure to make reasonable progress). In its order, the trial court noted that in addition to "hearing the testimony of the witnesses," it had "tak[en] judicial notice of and receiv[ed] into evidence the juvenile file, Court reports, exhibits and Orders." Respondent appeals.

Respondent argues that the trial court made insufficient findings of fact to support termination of parental rights because the trial court took most of its findings of fact from previous orders. We are not persuaded.

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

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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 (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) (2014). “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).

Respondent contends that the trial court erred by taking judicial notice of the prior orders in the underlying case file and reciting the findings of fact of those prior orders verbatim in the termination order. As respondent notes, almost all of the

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findings of fact made in the adjudicatory portion of the order terminating her parental rights are repeated from the trial court's prior orders in the case. Respondent contends that such repeated findings of fact do not demonstrate the trial court's independent determination of the facts established by the evidence. We disagree.

“[A] court may take judicial notice of earlier proceedings in the same cause.” *In re Byrd*, 72 N.C. App. 277, 279, 324 S.E.2d 273, 276 (1985). In cases where the trial court does take judicial notice of earlier proceedings, “the trial court is presumed to have disregarded any incompetent evidence.” *In re W.L.M. & B.J.M.*, 181 N.C. App. 518, 523, 640 S.E.2d 439, 442 (2007). In *W.L.M.*, the respondent argued that the trial court erred in taking judicial notice of the prior orders and court reports in the juvenile's underlying case files. This Court held that because the respondent did not object at trial to the trial court's taking judicial notice of the underlying files, the respondent “waived appellate review of th[e] issue.” *Id.* at 522, 640 S.E.2d at 442 (citing N.C. R. App. P. 10(b)(1)). Here, as in *W.L.M.*, the trial judge took judicial notice of “all the prior orders, court reports, documents, [and] exhibits in the underlying juvenile file” without objection.

Moreover, in this case, the trial court heard ample live testimony to make an independent determination on the termination of respondent's parental rights. This Court has stated that although the trial court may take judicial notice of earlier proceedings, the trial court “may not rely solely on prior court orders and reports but must receive some oral testimony at the termination hearing.” *In re D.M.R.*, 753

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S.E.2d 400, 2013 WL 6097821, at *4 (2013) (unpublished). We held that “[i]nsofar as the district court’s findings of fact are supported by the testimony at the termination hearing, . . . it is immaterial that the court copied language from its prior orders.” *Id.* at *5.

Here, as demonstrated by the transcript, which totals 750 pages, the trial court heard extensive live testimony particular to the issue of terminating respondent’s parental rights. Among those who testified were respondent’s social worker and respondent’s maternal aunt. The testimony indicated that respondent: (1) denied having any substance abuse issues; (2) refused to take some drug tests when requested; (3) tested positive on several drug screens; and (4) was hostile and refused to comply with the court’s orders to get drug and alcohol assessments, go to counseling, and to take parenting classes.

Based on the testimony presented at the hearing, as well as the prior orders in the case, the trial court found as fact:

45. While the Court recognizes that [respondent] express[es] [her] love for [Riley], that love has not translated into a commitment to do everything requested of [her] in the Department of Social Services’ Case Plans or the Orders of this Court. There are actions throughout the history of this case that demonstrate that [respondent has] no appreciation or understanding as to how [her] substance abuse, mental health issues and untruthfulness have impacted and harmed [Riley] and [her] opportunity to be reunited with [her] child. [Respondent does not seem] to understand that substance abuse, mental health issues and failure to follow safety directions led to [Riley] being placed in the custody of the Department of Social Services.

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. . . The Court has already discussed herein the drug tests, total lack of progress in counseling, failure to address mental health issues, failure to make visitations on time and failure of [respondent] [] to visit[;] the gradual change in the quality of the visitations, which were positive in the beginning, but more recently have become problematic as [Riley] has detached from [respondent] and attached to her foster family; [respondent's] complete lack of interest in participating in medical appointments for [Riley] and inquiring of the social worker, the Guardians Ad Litem or the foster parent as to how [Riley] is doing, only confirming visitation times and dates. . . . The Court is convinced that it is probable that [Riley] would be neglected if the child was returned to [respondent's] care[.] [Respondent has] shown a continued disregard of the consequences of [her] actions consistent with [her] disregard to do the things that were required to be reunited with [her] child. [Respondent] made a conscious decision to only cooperate on [her] terms and on [her] time schedule and did not place [Riley's] best interest first.

A careful review of the termination order reveals a sufficient number of properly supported findings to demonstrate respondent's prior neglect of Riley and a probability of future neglect if the child was returned to her care. *See Ballard*, 311 N.C. at 715, 319 S.E.2d at 232. Consequently, we conclude the trial court did not improperly rely on findings from its prior orders in determining that grounds existed to terminate respondent's parental rights at the time of the termination hearing. Accordingly we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

Judge STROUD and Judge DILLON concur.

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Report per Rule 30(e).