

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-855

Filed: 7 April 2015

Chatham County, No. 12 JT 70

IN THE MATTER OF: N.K.M.

Appeal by respondent father from order entered 10 April 2014 by Judge Beverly Scarlett in Chatham County District Court. Heard in the Court of Appeals 3 March 2015.

Holcomb & Cabe, LLP, by Samantha H. Cabe, for petitioner-appellee Chatham County Department of Social Services.

David A. Perez for respondent-appellant father.

Parker, Poe, Adams & Bernstein L.L.P., by R. Bruce Thompson II, for guardian ad litem.

BRYANT, Judge.

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Respondent father appeals from an order terminating his parental rights to his minor child, Nathan.¹ Because the trial court's findings of fact support its conclusion that the ground of neglect exists to terminate respondent's parental rights, we affirm.

The Chatham County Department of Social Services ("DSS") became involved with Nathan when he was just one-month old by filing a petition alleging he was an abused, neglected, and dependent juvenile. DSS specifically alleged that Nathan's mother had forcefully thrown him into his crib, had thrown him in the trash, and had stated that she did not want him and would kill him. DSS took non-secure custody of Nathan and placed him in a foster home.

Nathan's mother identified respondent, who lives in Ohio, as Nathan's father, and his paternity was subsequently confirmed through DNA testing. Respondent had brought Nathan's mother to live with him in Ohio in January 2012, when she was eighteen-years-old and he was forty-eight-years-old. Nathan's mother became pregnant while living with respondent and remained with him until he was arrested and incarcerated on drug charges, even though she stated that he had committed acts of domestic violence against her. After respondent's incarceration, Nathan's mother returned to North Carolina and initially lived with a friend.

¹ A pseudonym has been used to protect the identity of the minor child and for ease of reading.

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The trial court held a hearing on the petition on 14 February 2013, and entered an order on 28 February 2013 adjudicating Nathan to be a neglected and dependent juvenile. The court continued custody of Nathan with DSS and directed respondent to: (1) enter into an Out-of-home Family Services Agreement; (2) comply with a home study; (3) comply with the Interstate Compact on the Placement of Children (“ICPC”); (4) provide proof of appropriate housing and employment; and (5) submit to random drug screens if he sought custody of Nathan. DSS contacted social workers in Ohio to obtain a home study for respondent through the ICPC. However, respondent never completed the paperwork necessary for the Ohio social worker to conduct the study or otherwise follow through with the ICPC process, and his Ohio case was closed due to non-compliance.

In April 2013, Nathan’s mother returned to Ohio and resumed residing with respondent. By 2 May 2013, however, she had left respondent and was residing with a friend. Respondent was subsequently arrested in Ohio on charges related to domestic violence and the violation of his parole. He ultimately pled guilty to two counts of attempted domestic violence and was sentenced to one year in prison.

By order entered 6 September 2013, the trial court changed the permanent plan for Nathan to adoption, directed DSS to cease reunification efforts with respondent and Nathan’s mother, and ordered DSS to initiate an action to terminate parental rights to Nathan. DSS filed a motion to terminate respondent’s parental rights to Nathan on 3 October 2013. DSS alleged that grounds existed to terminate

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respondent's parental rights based on neglect, failure to pay for Nathan's care and support while Nathan was in DSS custody, and failure to legitimate Nathan. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3), (5) (2013). After a hearing on 13 March 2014, the trial court entered an order terminating respondent's parental rights. The court found grounds to terminate parental rights existed based on neglect and failure to legitimate, and concluded that termination of respondent's parental rights was in Nathan's best interests. Respondent appeals.²

On appeal, respondent raises two issues which present a single, larger issue as to whether the trial court erred in terminating his parental rights on the ground of neglect. We disagree.

This Court reviews a trial court's findings and conclusions regarding a ground for termination of parental rights to determine whether clear and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), (citation omitted). Grounds exist to terminate parental rights when the parent has neglected the juvenile. N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined in part as "[a] juvenile who does not receive proper care, supervision, or discipline . . . or who lives in an environment injurious to the juvenile's welfare[.]" N.C. Gen. Stat. §

² Nathan's mother is not a party to this appeal.

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7B-101(15) (2013). Generally, “[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child ‘at the time of the termination proceeding.’” *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). However, “[w]here, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect.” *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003) (citations omitted). A trial court may terminate parental rights based upon prior neglect of the juvenile if “the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to [his or] her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). “Relevant to the determination of probability of repetition of neglect is whether the parent has made any meaningful progress in eliminating the conditions that led to the removal of [the] child[].” *In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (citation and quotations omitted).

Here, the trial court made the following findings of fact in support of its conclusion that respondent neglected Nathan:

7. Respondent father lives in Ohio and has never been to North Carolina.
8. Respondent father has never seen [Nathan].

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9. Respondent father is currently incarcerated due to a conviction of domestic violence against Respondent mother. It appears from a Journal Entry from Ohio that Respondent father will be incarcerated for one year.

10. When asked by the Social Worker how many children he had, Respondent Father reported “more than you can count on two (2) hands”.

11. Respondent father has a long criminal history that includes crimes involving violence and drugs.

...

14. Respondent father has not taken any initiative to meet [Nathan], much less to assume custody of him.

15. CCDSS requested a home study on Respondent father through the ICPC. The home study was not completed and the case was closed because Respondent father did not cooperate with or participate in the home study.

16. Respondent father was ordered to pay child support but is in arrears by more than \$650.00.

...

19. [Nathan] is a neglected juvenile within the meaning of G.S. 7B-101 in that he does not receive the proper care, supervision, or discipline from [his] parent or who lives in an environment injurious to the juvenile’s welfare.

20. [Nathan] was impaired and at a substantial risk of impairment as a result of Respondent Father’s neglect.

21. It is likely that the neglect experienced by [Nathan] in the care of Respondent [father] will repeat or continue if [he] is returned to Respondent [father]’s care and custody.

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Respondent has not challenged findings of fact 7, 8, 10, 11, or 15, and they are, thus, binding on this Court. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted).

Respondent first argues finding of fact 9 and 14 are unsupported by competent evidence. Respondent contends finding of fact 9 is unsupported because there is no evidence that his current incarceration is due to an act of domestic violence against Nathan's mother; however, this finding is supported by Nathan's mother's testimony and reports from DSS offered into evidence at the hearing without objection. Respondent next argues that finding of fact 14 is unsupported because no evidence was presented at the hearing of his ability to visit Nathan in North Carolina. Although respondent is correct that no evidence of his ability to visit Nathan in North Carolina was presented at the hearing, the testimony of the social worker and reports admitted into evidence at the hearing established that respondent has never seen his son and willfully failed to cooperate with Ohio social workers to determine whether he would be an appropriate caregiver for Nathan. Therefore, we conclude that this finding of fact is sufficiently supported by clear, cogent, and convincing evidence.

Respondent also argues that finding of fact 16 is misleading because the evidence does not indicate the amount of his court-ordered monthly child support or how much of the arrearage accumulated while he was incarcerated. Respondent's argument is irrelevant though, as he does not contest the fact that he is under a child support order and is in arrears for his failure to pay the required support. That

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respondent's arrearage may have accumulated during his incarceration is similarly unavailing, as his imprisonment will not shield him from his total failure to pay any support, as testified to by the DSS social worker. *See, e.g., In re Yocum*, 158 N.C. App. 198, 204, 580 S.E.2d 399, 403 (2003) (upholding termination of parental rights based on neglect when, among other things, the respondent never paid any child support and had only limited visits with child).

Respondent lastly challenges findings of fact 19, 20, and 21. Respondent contends Nathan never experienced any neglect while in his care and was never impaired or at a substantial risk of impairment due to any neglect on his part. Respondent's argument is meritless though, as respondent never provided any care for Nathan, never took any parental responsibility for Nathan, and by his lack of involvement in Nathan's life allowed Nathan to remain with a neglectful mother. Respondent was willfully uninvolved in Nathan's life, and cannot use his refusal to engage in parenting Nathan as a shield in these proceedings. Furthermore, respondent utterly failed to take any action toward complying with the trial court's orders in the underlying case as seen by the fact that his ICPC case was closed due to his non-compliance.

Respondent's complete lack of involvement in Nathan's life supports the trial court's conclusion that respondent neglected Nathan by not providing him with proper care, supervision, or discipline, and by allowing him to reside in an environment injurious to his welfare. Equally, respondent's failure to comply with

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the trial court's orders in the underlying case and continued commission of criminal acts supports the trial court's conclusion that there is a probability that respondent would again neglect Nathan should he be placed in respondent's care and custody. Accordingly, the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and the findings fully support its conclusion that respondent neglected Nathan.

For these reasons, we hold that the trial court did not err in concluding grounds exist to terminate respondent's parental rights on the basis of neglect pursuant to N.C.G.S. § 7B-1111(a)(1). Because of our holding, we need not address respondent's arguments regarding the trial court's conclusion that grounds also exist to terminate his parental rights on the basis of his failure to legitimate Nathan. *See In re N.T.U.*, ___ N.C. App. ___, ___, 760 S.E.2d 49, 57 ("In termination of parental rights proceedings, the trial court's finding of any one of the . . . enumerated grounds is sufficient to support a termination." (citation and quotation omitted)), *disc. review denied*, ___ N.C. ___, 763 S.E.2d 517 (2014). Respondent has not challenged the trial court's dispositional conclusion that termination of his parental rights is in Nathan's best interests, and we, thus, affirm the court's order terminating his parental rights.

AFFIRMED.

Judges CALABRIA and DIETZ concur.

Report per Rule 30(e).