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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-576

Filed: 3 November 2015

Buncombe County, No. 13 JT 196

IN THE MATTER OF: B.J.L.

Appeal by respondent-father from order entered 20 February 2015 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 5 October 2015.

Hanna Frost Honeycutt for petitioner-appellee Buncombe County Department of Social Services.

Amanda Armstrong for Guardian ad Litem.

Edward Eldred for respondent-appellant father.

DIETZ, Judge.

Respondent appeals from an order terminating his parental rights to his son, B.J.L. (“Brian”)¹. The Buncombe County Department of Social Services first became involved with Brian’s case when Respondent head-butted Brian’s mother, breaking her nose, while she was still pregnant with Brian. Ultimately, DSS sought to terminate Respondent’s parental rights based on neglect. After a hearing, the trial court made a series of uncontested fact findings, including that Respondent admitted

¹ A pseudonym is used to protect the identity of the child.

he could not provide a safe, stable home for Brian; that Respondent was selling illegal drugs to make money; that he frequently engaged in criminal activity and had multiple periods of incarceration; and that he had not completed many of the recommended programs and services DSS identified to help remediate his parenting issues. For the reasons discussed below, these uncontested findings support the trial court's termination of Respondent's parental rights based on neglect.

Facts and Procedural History

The Buncombe County Department of Social Services became involved with Respondent in February 2013 when it received a report that Respondent head-butted Brian's mother in the face, breaking her nose, while she was pregnant with him. The day after the altercation, Brian was born and tested positive for opiates, amphetamines and marijuana. On 22 May 2013, DSS filed a petition alleging Brian was a neglected and dependent juvenile and, on 8 July 2013, amended the petition to include an allegation that Brian was abused.

The petition alleged that there had been three altercations between Respondent and Brian's mother while she was pregnant with Brian and that DSS made referrals for Respondent and Brian's mother. The petition further alleged that Brian lived with his mother and her husband, whom she married in April 2013, that the husband started a fire in their home, and that Brian was injured in the fire. DSS took nonsecure custody of Brian.

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After conducting a hearing in October 2013, the trial court adjudicated Brian an abused, neglected, and dependent juvenile and ordered Brian to remain in DSS custody. The court ordered Respondent to complete a hair follicle drug test, to complete a domestic violence assessment and follow recommendations, and to complete parenting classes, submit to random drug screens, and obtain and maintain stable housing.

At a permanency planning hearing in November 2013, the trial court ordered reunification with his parents; however, the court suspended Respondent's visitation with Brian until Respondent completed the required drug testing ordered in October, which Respondent had not yet done.

The court held another permanency planning hearing in March 2014, at which point respondent was incarcerated, and changed the permanent plan from reunification to guardianship concurrent with reunification. The court allowed Respondent to have supervised visitation once he was released from jail and passed a drug test.

By permanency planning order filed 20 August 2014, the court ceased reunification efforts with Respondent and Brian's mother and made the permanent plan adoption, concurrent with guardianship.

On 29 August 2014, DSS filed a petition to terminate the parental rights of Respondent and Brian's mother. Sadly, Brian's mother was later killed in an

automobile accident. Following a hearing in January 2015, the court entered an order terminating Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), and (a)(7) for neglect, willful failure to make reasonable progress, and willful abandonment. Respondent timely appealed.

Analysis

Respondent argues that the trial court erred in terminating his parental rights. When reviewing a termination of parental rights case, we consider whether the findings of fact are “supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.” *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004).

Respondent first contends that the trial court erred in terminating his parental rights based upon neglect. We disagree.

A trial court may terminate parental rights based on a finding that a parent has neglected a juvenile. N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is one who “does not receive proper care, supervision, or discipline” from a parent or caretaker, or “who lives in an environment injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15). “A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination

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proceeding.” *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). However, when a parent has not had custody of a child for an extended period the trial court properly may rely on a history of neglect and the likelihood that the neglect will be repeated:

[W]hen, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible. In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect.

In re L.O.K., 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citations and internal quotation marks omitted).

Here, it is undisputed that Brian had previously been adjudicated a neglected juvenile. However, Respondent argues that the trial court erred in concluding that this neglect likely would be repeated if Brian were returned to *his* custody because Brian was not taken into custody based upon Respondent’s conduct, but based upon neglect by Brian’s mother. But the trial court’s fact findings include numerous instances of past neglect and likely future neglect that specifically reference Respondent and his own conduct, including the following findings:

15. Respondent father committed acts of domestic violence against [Brian’s mother] in the presence of other minor children in the home resulting in injuries to [Brian’s mother], including a broken nose, black eyes and bleeding.

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Respondent father admitted to head-butting [Brian's mother] while she was pregnant with the minor child. During the Respondent mother's pregnancy with the minor child, there were three incidents that law enforcement responded to due to altercations between [Brian's mother] and Respondent father.

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17. The investigative social worker, made referrals for the Respondent father to engage in anger management assessments through the Relationship Center and All Soul's Counseling. Respondent father failed to avail himself of those referrals.

18. At the Dispositional hearing, the Respondent father was ordered to complete parenting classes and submit to a psychological evaluation. Additionally, the Respondent father completed a case plan with the Department and agreed to complete parenting classes, submit to psychological evaluation, submit to a domestic violence assessment, and complete a hair follicle drug screen.

19. The Department provided referrals for parenting classes; however, the Respondent father never followed up with this service.

20. The Respondent father submitted to a psychological evaluation in July 2013 with Grandis Evaluation Center. Grandis Evaluation Center recommended that the Respondent father submit to a domestic violence and anger management assessment and submit to a substance abuse assessment. The Department provided the Respondent father with the resources to address these recommendations; however, the Respondent father never followed up with these services.

21. Respondent father has failed to submit to requested drug screens on a number of occasions.

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22. The Respondent father has pending criminal charges for driving a stolen vehicle, exceeding the speed limit in excess of 100 mph, and eluding arrest. The Respondent father was previously incarcerated in 2014 on charges of Larceny.

23. The Respondent father was also incarcerated in 2013 during the initial stages of this case. When he was released, he did not contact the Department, as requested.

24. During his incarceration, SW Jenkins attempted to assist him in engaging in services available in jail; however, the Respondent father asked SW Jenkins not to visit him in jail. Respondent father indicated that he would contact her after his release, but he failed to do so.

25. Visitation between the Respondent father and the minor child was suspended on November 20, 2013 until Respondent father submitted to a hair follicle drug screen. The Respondent has not submitted to a hair follicle drug screen, so visits have not resumed.

26. The Respondent father had visits with the minor child from May 2013 – November 2013. During visits, the Respondent father did exhibit concerning behaviors. During one incident, the Respondent father began yelling and cursing at the social worker, while holding the minor child in his arms.

27. The Respondent father has not paid child support or provided any letters or cards for the minor child. Respondent father reports he has provided some small gifts sporadically through the paternal grandmother.

28. The Respondent father acknowledges that he is unable to provide a safe, stable home for the minor child at this time.

29. Respondent father used controlled substances as recently as 1-2 months ago.

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30. Respondent father was making and selling methamphetamines to generate income.

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36. Respondent father has continued to engage in criminal activity while the minor child has been in foster care. The Respondent father has been incarcerated on at least three occasions while the minor child has been in foster care. On at least one occasion, the Respondent father engaged in criminal activity while on his way to the Department.

37. Respondent father has failed to visit with the minor child. Respondent father last visited with the child on November 6, 2013.

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42. Respondent father has numerous criminal charges pending, some of which were accrued in January of 2015.

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45. There is a nexus between Respondent father's actions and his inability to care for the minor child.

Respondent does not contest these findings and they are binding on appeal.

Koufman v. Koufman, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

These uncontested findings support the trial court's conclusion that Respondent neglected Brian and that such neglect will likely be repeated should Brian be returned to his care. The findings establish that DSS's initial investigation was prompted by Respondent's violence against Brian's mother. The findings also establish that Respondent admitted he was unable to provide for Brian's physical and

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economic needs. Finally, the court found numerous behaviors that demonstrated a likelihood of future neglect. For example, Respondent continued to commit crimes and be sent to jail; he continued to sell illegal drugs; and he repeatedly failed to complete recommended training to address his drug problems and learn necessary parenting skills. These findings, taken together, easily are sufficient to show that the neglect would likely recur if the child were returned to Respondent's care. Therefore, the trial court did not err in determining that the ground of neglect existed.

Our determination that there is at least one ground to support a conclusion that parental rights should be terminated makes it unnecessary to address the remaining grounds. *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 663 (2003).

Conclusion

The trial court's order terminating Respondent's parental rights is affirmed.

AFFIRMED.

Judges ELMORE and DILLON concur.

Report per Rule 30(e).