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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-195

Filed: 4 October 2016

Durham County, Nos. 13 J 173-75

IN THE MATTER OF: J.W., Z.W., J.F.

Appeal by respondent from order entered 9 November 2015 by Judge Doretta Walker in Durham County District Court. Heard in the Court of Appeals 12 September 2016.

Senior Assistant County Attorney Bettyna Belly Abney, for petitioner-appellee Durham County Department of Social Services.

Manning, Fulton & Skinner, PA, by Michael S. Harrell, for guardian ad litem.

Mark L. Hayes for respondent-mother.

McCULLOUGH, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights to her children, J.W. ("John"), Z.W. ("Zephyr"), and J.F. ("James")¹. For the following reasons, we affirm.

On 18 October 2013, the Durham County Department of Social Services ("DSS") filed a petition alleging that John, Zephyr, and James were neglected. At the time, respondent-mother and the children were living in a home with at least ten

¹ Pseudonyms are used to protect the identities of the juveniles and for ease of reading.

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other individuals without a lease and at risk of having the electricity and utilities turned off. DSS alleged that respondent-mother has both mental health and cognitive issues that interfere with her ability to provide appropriate and proper care for the juveniles. DSS also alleged that respondent-mother failed to ensure the juveniles received proper medical care, failed to ensure John regularly attended school, used inappropriate discipline on the juveniles, and had unstable housing. DSS obtained non-secure custody of the juveniles.

On 5 February 2014, the trial court adjudicated the juveniles neglected and dependent. The trial court ordered respondent-mother to participate in mental health services and follow any recommendations; attend and complete a parenting class; obtain and maintain stable housing for her and the children; obtain and maintain a stable source of income; attend any and all medical appointments for the children; attend each scheduled opportunity for supervised visitation; and limit her contact with the maternal grandmother and set appropriate boundaries.

After conducting a permanency planning review hearing, the trial court entered an order on 7 April 2015 ceasing reunification efforts. The trial court found that respondent-mother continued to have unstable housing, had not followed up on her own physical health needs, and had been recently incarcerated for simple assault, communicating threats, resisting a public officer, and violating her probation. The

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court also found that respondent-mother admitted to taking more than the prescribed dosage for her prescription medications.

On or about 11 May 2015, DSS filed a petition to terminate respondent-mother's parental rights alleging grounds of neglect, dependency, and willfully leaving the children in foster care for more than twelve months without making reasonable progress. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6) (2015). After a hearing, the trial court entered an order on 9 November 2015 terminating respondent-mother's parental rights based on the grounds alleged in the petition. Respondent-mother appealed.²

Respondent-mother first argues the trial court erred in concluding grounds existed to terminate her parental rights based on neglect because the court failed to resolve whether the new Assertive Community Treatment Team ("ACTT") services would prevent a repetition of past neglect by addressing respondent-mother's issues. We do not agree.

"The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Shepard*, 162 N.C. App.

² Respondent-mother filed a petition for writ of certiorari on 19 April 2016 stating that her notice of appeal may not be proper because it does not contain a certificate of service. However, because failure to serve the notice of appeal is a nonjurisdictional defect, and the parties have waived any defect by failing to file a motion to dismiss and by participating fully in the appeal without objection, we dismiss the petition and consider the case on the merits. *See Hale v. Afro-am. Arts Int'l, Inc.*, 335 N.C. 231, 232, 436 S.E.2d 588, 589 (1993).

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215, 221, 591 S.E.2d 1, 6 (citation omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). “If the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (citation and quotation marks omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). Unchallenged findings of facts “are conclusive on appeal and binding on this Court.” *Id.* at 532, 679 S.E.2d at 909. We review the trial court’s conclusions of law *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff’d per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

Pursuant to N.C. Gen. Stat. § 7B-1111, a trial court may terminate parental rights when the parent has neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1).

A neglected juvenile is

[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) (2015).

Generally, “[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). However, when the parent has been separated from the child for an extended period of time, “parental

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rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000). The court must take into consideration any evidence of changed conditions, but “[t]he determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding.*” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (emphasis in original). “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] children.” *In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (internal quotation marks omitted).

Here, the trial court found that the children had previously been adjudicated as neglected. The trial court also made numerous findings of fact regarding respondent-mother’s failure to make meaningful progress on her case plan, which demonstrate a probability of repetition of neglect. The trial court found that: (1) respondent-mother was initially diagnosed with Bipolar 2 and Major Depressive Disorder, but most recently was diagnosed with Bipolar Disorder, mixed type; (2) respondent-mother appeared for only half of her scheduled talk therapy appointments and there was concern she was “overtaking” her prescription

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medication; (3) respondent-mother admitted to abusing pain killers, which became intense two months before the hearing; (4) respondent-mother's depression sometimes led to the neglect of her own medical issues; (5) the social worker could not confirm respondent-mother's completion of the parenting program; (6) respondent-mother continued to have unstable housing; (7) respondent-mother lacked stable income other than her social security check and failed to participate in any education or training likely to enhance her ability to obtain employment; and (8) the maternal grandmother continued to be an intrusive and unhelpful force in respondent-mother's life as she attempted to work on her case plan.

Respondent-mother does not challenge the accuracy of these findings and they are now binding. *S.C.R.*, 198 N.C. App. at 532, 679 S.E.2d at 909. Respondent-mother contends her recent enrollment in ACTT services constituted a "changed condition" and the trial court erred in failing to make findings as to whether the ACTT services would or would not prevent a repetition of neglect.

"However, the trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute." *Carpenter v. Carpenter*, 225 N.C. App. 269, 271, 737 S.E.2d 783, 785 (2013). Because respondent had not yet started any of the new ACTT services at the time of the hearing, the potential impact of the future ACTT services was irrelevant in evaluating respondent-mother's ability to care for the children at

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the time of the termination hearing. *See In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (“In 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.’”). At the hearing, respondent-mother admitted she was not ready to have the children returned to her care because she first needed to complete substance abuse classes, obtain a stable home, and distance herself from her family. Additionally, the trial court’s findings demonstrate that at the time of the hearing, respondent-mother had made little progress on her case plan and had not resolved any of the issues which led to the children’s removal from her home. These findings support the trial court’s conclusion that a repetition of neglect was likely to occur if the children were returned to respondent-mother’s care. Therefore, the trial court did not err in determining that grounds existed to terminate respondent-mother’s parental rights based on neglect.

Because we hold termination was proper pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), we need not address respondent-mother’s remaining arguments regarding the other two grounds. *See In re N.T.U.*, 234 N.C. App. 722, 733, 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 marks omitted), *disc. review denied*, ___ N.C. ___, 763 S.E.2d 517 (2014).

AFFIRMED.

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Judges DILLON and ENOCHS concur.

Report per Rule 30(e).