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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-225

Filed: 18 October 2016

Orange County, No. 14 JT 28

IN THE MATTER OF: J.J.

Appeal by respondent from order entered 17 December 2015 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 26 September 2016.

No brief for Orange County Department of Social Services, petitioner-appellee.

Parker Poe Adams & Bernstein, LLP, by Jennifer M. Hoefling and William L. Esser IV, for guardian ad litem.

Robert W. Ewing, for respondent-appellant.

CALABRIA, Judge.

Respondent appeals from an order terminating his parental rights to his son, J.J., born in September 2011. For the following reasons, we affirm.

I. Factual and Procedural Background

On 26 March 2014, Orange County Department of Social Services (“DSS”) filed a juvenile petition alleging that J.J. was a neglected and dependent juvenile. In subsequently adjudicating J.J. as a neglected and dependent juvenile, the trial court

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found that the petition was filed after respondent physically assaulted and raped J.J.'s mother.¹ As a consequence of the assaults, J.J.'s mother underwent surgery to repair a tear in her rectum and endured two hospitalizations, one for the surgery and the second for treatment of an infection. The trial court awarded custody of J.J. to DSS. Respondent subsequently pled guilty on 15 October 2014 to assault with a deadly weapon inflicting serious injury, sexual battery, and assault inflicting serious injury while in the presence of a minor. The plea agreement provided that respondent would serve consecutive active prison terms of 32-51 months and 60 days.

At a permanency planning hearing on 20 November 2014, the trial court ordered cessation of reunification efforts with respondent. On 8 April 2015, DSS filed a motion in the cause to terminate respondent's parental rights on the grounds that respondent: (1) neglected J.J.; (2) willfully placed the child in foster care or placement outside the home for more than twelve months without showing reasonable progress in correcting the conditions which led to the removal of the child; (3) failed to establish paternity judicially or by affidavit or to legitimate the child; and (4) is incapable for providing for the proper care and supervision of the child such that he is a dependent juvenile. The trial court held hearings on 5 and 8 October 2015 and filed an order on 17 December 2015 finding the existence of grounds (1), (2) and (4)

¹ The parental rights of J.J.'s mother were also ultimately terminated. She appealed and filed a separate record on appeal, docketed under case number COA16-281.

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listed above. The trial court also concluded that termination of respondent's parental rights is in J.J.'s best interest.

II. Standard of Review

A proceeding to terminate parental rights involves two stages, adjudication and disposition. *In re D.R.B.*, 182 N.C. App. 733, 735, 643 S.E.2d 77, 79 (2007). During the adjudication phase, the trial court "examines the evidence and determines whether sufficient grounds exist under N.C. Gen. Stat. § 7B-1111 to warrant termination of parental rights." *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736 (2004), *aff'd per curiam*, 359 N.C. 405, 610 S.E.2d 199 (2005). If the trial court determines that one or more grounds for terminating a parent's rights exists, it then proceeds to the disposition phase and makes a discretionary determination whether terminating the parent's rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2015). This Court reviews the trial court's order to determine whether the findings of fact are supported by clear, cogent and convincing evidence and whether the findings of fact support the adjudicatory conclusions of law. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6, *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). The conclusions of law are reviewable *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).

III. Neglected Juvenile

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The first ground for termination of parental rights found by the trial court is that respondent neglected the juvenile. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2015). A juvenile is neglected if he does not receive proper care, supervision or discipline from his parent, has been abandoned, is not provided necessary medical or remedial care, or lives in an environment injurious to his welfare. N.C. Gen. Stat. § 7B-101(15) (2015). “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). The trial court must consider evidence of any changed circumstances since the time of a prior adjudication and the likelihood of repetition of the neglect. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). When the child has not been in the parent’s custody, 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).

Respondent contends that there was insufficient clear, cogent and convincing evidence to support a finding that there would be a repetition of neglect if J.J. is returned to his custody. In support of this contention, respondent cites evidence of actions he has taken while he has been incarcerated to show that he is correcting the conditions which led to the juvenile’s removal from the home. These actions include meeting with a psychiatrist, attending AA/NA meetings to address his alcohol and

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substance abuse issues, participating in classes to obtain a general education development diploma (“GED”), participating in a job training program, recommending possible placement options for his son, and maintaining a relationship with the child by sending him letters and a birthday card.

The trial court’s findings of fact in the termination of parental rights order summarize the events surrounding respondent’s assault upon J.J.’s mother and leading to the original adjudication that J.J. was a neglected juvenile. While in J.J.’s bedroom and in his presence, respondent physically assaulted the juvenile’s mother. Respondent, who was intoxicated, moved J.J.’s mother to the living room, where he tied her legs together and sexually assaulted her, leaving her severely injured. After respondent left the residence, J.J.’s mother, bleeding profusely, managed to go to a neighbor’s house and ask the neighbor to check on her later. The neighbor subsequently found J.J.’s mother in her residence going in and out of consciousness. J.J.’s mother underwent surgery for injuries inflicted by respondent. She was hospitalized for several days.

The trial court’s findings further show that at the time respondent pled guilty to the assaults, respondent had three prior convictions of assault on a female. Respondent and J.J.’s mother had a history of domestic violence or discord. Records of the Chapel Hill Police Department disclosed that police were called to their home concerning incidents of domestic violence six times dating back to 31 October 2012.

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A social worker visited respondent in the jail one week after the sexual assault, and respondent became agitated and aggressive during the visit. Respondent “pounded the walls” and spoke profanely to the social worker. Respondent acknowledged to the social worker that he has abused alcohol, marijuana, cocaine, and prescription pills, and that he had been drinking alcohol on the night he assaulted J.J.’s mother. Respondent also acknowledged that he had two other children who are being raised by his family. Respondent has not taken domestic violence, parenting or anger management classes, and he has failed to provide verification of completion of a substance abuse assessment or completion of treatment for substance abuse or domestic violence.

Findings of fact are binding on appeal “where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.” *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984). We find ample evidentiary support for the foregoing findings of fact in the social worker’s testimony and report, police reports, and court records. These findings show that J.J. was adjudicated as a neglected juvenile largely on the basis that he lived in an environment injurious to his welfare, marked by domestic violence. These findings further show that respondent has a history of domestic violence, that he has anger management issues, and that respondent has not addressed these issues. We conclude that these findings support the trial court’s ultimate finding of fact that the

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neglect J.J. experienced is likely to repeat or continue if he is returned to respondent's care or custody.

"A valid finding on one statutorily enumerated ground is sufficient to support an order terminating parental rights." *In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986). Having affirmed the determination of one ground, we need not consider respondent's arguments concerning the other grounds. *In re P.L.P.*, 173 N.C. App. 1, 9, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

We affirm the order terminating respondent's parental rights.

AFFIRMED.

Judges STROUD and INMAN concur.

Report per Rule 30(e).