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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-281

Filed: 18 October 2016

Orange County, No. 14 JA 28

IN THE MATTER OF: J.J.

Appeal by respondent from orders entered 14 April 2015 by Judge M. Patricia DeVine and 17 December 2015 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 26 September 2016.

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

Parker Poe Adams & Bernstein, LLP, by Jennifer M. Hoefling, for guardian ad litem.

Miller & Audino, LLP, by Jay Anthony Audino, for respondent-appellant.

CALABRIA, Judge.

Respondent appeals from an order terminating her parental rights to her son, J.J., born in September 2011, and a permanency planning order changing the permanent plan from reunification to adoption. For the following reasons, we affirm.

I. Factual and Procedural Background

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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 found that the petition was filed after J.J.’s father physically assaulted and raped respondent.¹ As a consequence of the assaults, respondent 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. The trial court also ordered respondent to engage in substance abuse and mental health services as recommended by her treatment provider, engage in services for victims of domestic violence, submit to random drug screens, and obtain safe, stable and violence-free housing.

On 19 March 2015 the trial court conducted a permanency planning hearing and changed the permanent plan for J.J. to adoption. The trial court filed a written order on 14 April 2015 and respondent filed notice to preserve the right of appeal of the order on 23 April 2015. In the order, the trial court found as facts that respondent has a significant history of substance abuse originating at the age of sixteen, and resulting in the loss of custody of her other children in 2006; that after DSS obtained custody of J.J. in March 2014, respondent received treatment for substance abuse and remained drug free until relapsing in September 2014; that respondent tested

¹ The parental rights of J.J.’s father were also ultimately terminated. He appealed and filed a separate record on appeal, docketed under case number COA16-225.

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positive for cocaine in November 2014; that respondent admitted using opiates, benzodiazepines and alcohol; that respondent did not engage in services during the months of October through December 2014; that respondent appeared for a hearing on 15 January 2015 in an intoxicated state; that respondent admitted to the social worker that she had gone to a “dope house” earlier that morning, and had used crack cocaine, marijuana, alcohol and Klonipin; and that as of the date of the hearing, respondent had resumed substance abuse treatment.

On 8 April 2015, DSS filed a motion in the cause to terminate respondent’s parental rights. On 5 and 8 October 2015, the trial court conducted a hearing upon the motion to terminate parental rights. On 17 December 2015, the trial court filed an order concluding the following grounds existed for termination of respondent’s parental rights: (1) respondent has neglected J.J.; (2) respondent is incapable of providing for the proper care and supervision of J.J. such that he is a dependent juvenile; and (3) respondent has willfully left J.J. in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting the conditions which led to the removal of J.J. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2) & (6) (2015). The trial court also concluded that it is in the juvenile’s best interest that respondent’s parental rights are terminated. Respondent filed notice of appeal from

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the termination of parental rights order and the permanency planning order filed 14 April 2015.

In the order terminating parental rights, the trial court made findings of fact indicating respondent has had a long history of drug addiction, drug treatment on multiple occasions, and numerous unsuccessful attempts at recovery. Although she has been recommended for residential treatment, respondent has failed to complete one. Respondent attended a drug rehabilitation program while pregnant with J.J. but failed to complete it. Respondent had periods of sobriety which occurred during times she was not parenting, one of which lasted for up to two years. A forensic psychologist evaluated respondent on 10 March 2015, after respondent had appeared in court on 15 January 2015 in an intoxicated state and had been taken from court to a detoxification facility. At the time of the evaluation respondent had been substance free for about one month, but respondent relapsed ten days afterward.

Respondent acknowledged that she entered into a relationship with J.J.'s father despite having been in a violent relationship with his best friend and knowing he sold drugs. Respondent's relationship with J.J.'s father was marked by domestic violence. Police incident reports show that police were called to respondent's home on 31 October 2012, 28 November 2012, 22 February 2013, 26 April 2013, 4 August 2013, 13 November 2013, and 22 March 2014. Ultimately on or about 23 March 2014, J.J.'s father assaulted respondent by striking her in the face while J.J. was present.

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Respondent managed to cause the father to leave J.J.'s bedroom and go into the living room, where the father assaulted her again. He "hog tied" respondent's legs and assaulted her "by inserting two fingers in the shape of a V in her anus twisting them like a corkscrew." While this assault was occurring, J.J. entered the living room and questioned what was happening. The father replied that respondent was a "crack whore" who was getting what she deserved. As a result of the assault, respondent bled profusely, bleeding through several changes of clothing. Respondent underwent surgery and remained hospitalized for two weeks. She continued to experience physical pain two to three months after the assault.

The forensic psychologist diagnosed respondent as having major depressive disorder, post-traumatic stress disorder, and borderline personality disorder. In the forensic psychologist's opinion, respondent's "psychological vulnerabilities predispose[] her to revictimization[.]" The psychologist also opined that abuse respondent sustained during her childhood "impacted her judgment regarding relationships with violent men" and "trauma predisposes her to drug abuse." The psychologist also suggested that respondent would need to demonstrate consistent attendance at trauma and substance abuse treatment for at least one year prior to being able to parent independently, and that after completion of treatment, she would need a "solid relapse prevention plan." The psychologist also noted that if respondent did live with J.J., she "would need to be in a setting that would promote her recovery

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and increase her accountability.” The psychologist finally stated that respondent’s remissions “appear to be short in duration. Her substance abuse and trauma have negatively affected her ability to parent.”

II. Permanency Planning Order

In her first argument, respondent contends that the trial court, in its permanency planning order, erred in changing the permanent plan for J.J. to adoption. We disagree.

A. Standard of Review

“This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court’s conclusions, and whether the trial court abused its discretion with respect to disposition.” *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007).

“‘An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.’” *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007) (quoting *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)), *aff’d per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

B. Analysis

Respondent contends that the trial court abused its discretion by (1) making the permanent plan adoption instead of guardianship or custody and (2) failing to

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order a concurrent plan as required by N.C. Gen. Stat. § 7B-906.2. We conclude that the trial court's decision to change the plan to adoption instead of guardianship or custody is based on reason.

The trial court's findings of fact show that it considered respondent's prolonged history of drug addiction and inability to vanquish it, including showing up intoxicated for the last court hearing in this matter, in its determination to change the permanent plan from reunification. The trial court expressly found that legal guardianship or custody with a relative "is not possible and should not be established as no suitable relative placement has been identified despite diligent efforts by OCDSS." This finding is supported by the trial court report prepared by DSS, which the trial court incorporated into the permanency planning order. This report states that respondent had not identified any relatives to be considered as placement options. Respondent's mother, who has guardianship of respondent's two other children, has told respondent that she will not be a placement option, and she did not respond to attempted contact by the social worker. DSS also considered relative placement options offered by J.J.'s father, including his sister, mother and aunt. After completing a kinship placement assessment, DSS recommended that J.J. not be placed with his father's sister. J.J.'s paternal grandmother and great aunt never followed up with DSS to request placement of J.J. with them.

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Regarding respondent's argument that the trial court erred by failing to identify a concurrent plan as required by N.C. Gen. Stat. § 7B-906.2, we note that this statute is a new addition to the Juvenile Code and did not become effective until 1 October 2015, several months after the order at bar was entered. *See* N.C. Gen. Stat. § 7B-906.2 (2015); 2015 N.C. Sess. Laws, c. 136, §§ 14, 18. We therefore overrule this argument.

III. Termination of Parental Rights

In her second argument, respondent contends that the trial court erred in terminating her parental rights with respect to J.J. We disagree.

A. 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

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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).

B. Analysis

Respondent contends that the trial court's findings of fact and the evidence do not support the trial court's conclusion of law that her parental rights may be terminated on the grounds that she neglected J.J. 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 a juvenile has not been in a parent's custody, the trial court "must assess whether there is a substantial

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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 argues that the trial court’s findings of fact and the evidence do not support a conclusion that repetition of neglect is probable. She also challenges, as unsupported by clear and convincing evidence, finding of fact number 28 in which the trial court found that she failed to maintain a safe and stable home and to ensure that J.J. receives necessary health and remedial care, and that her actions “have subjected the child to the risk of emotional harm and created an environment injurious to the child’s welfare.”

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). Unchallenged findings of fact are also binding. *In re C.B.*, 180 N.C. App. 221, 223, 636 S.E.2d 336, 337 (2006), *aff’d per curiam*, 361 N.C. 345, 643 S.E.2d 587 (2007). Respondent does not challenge the trial court’s findings of fact regarding her long history of substance abuse, her numerous unsuccessful attempts at recovery, her failure to complete a substance abuse treatment program while she was pregnant with J.J., her pattern of engaging in relationships with abusive and violent men, her loss of two other children due to neglect, and her failure to complete recommendations made by DSS and her parental evaluation. She also does not challenge the trial court’s findings of fact

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regarding the psychological evaluation and the diagnoses made, and prognosis given, by the psychologist who evaluated her, and respondent's need for prolonged and intense treatment before she could be able to parent independently.

The evidence also supports the trial court's finding that respondent's actions have subjected J.J. to the risk of emotional harm and created an environment injurious to J.J.'s welfare. On the evening respondent was brutally attacked by J.J.'s father, an attack witnessed by J.J., she had taken J.J. with her while she engaged in a binge of drinking and consuming pills. Despite multiple incidents of domestic violence, respondent continued to have contact with J.J.'s father in disregard of protective orders and to expose J.J. to this violence. Because of his significant exposure to conflict and physical fighting in respondent's home, J.J. completed a trauma evaluation through the UNC Program on Childhood Trauma and Maltreatment. J.J. exhibited signs of depression, hyperactivity, aggression and poor impulse control. He was diagnosed with an adjustment disorder. J.J. also had developmental delays, including significantly delayed speech, when he entered foster care.

We conclude that the foregoing findings of fact and evidence support the trial court's conclusion that respondent neglected J.J. and that repetition of the neglect is probable. We thus uphold the adjudication of the first ground of neglect.

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Respondent also challenges the trial court's finding of the existence of two other grounds to terminate parental rights. "A valid finding of 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).

Respondent lastly contends that the trial court abused its discretion by determining that termination of her parental rights is in J.J.'s best interest. A court may be reversed for abuse of discretion only if the appellant can show that its ruling "is so arbitrary that it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. at 10-11, 650 S.E.2d at 51. Respondent argues that the trial court's determination is "manifestly unsupported by reason" due to the strong bond between J.J., respondent, and his siblings.

In determining whether termination of parental rights is in the best interest of a juvenile, the trial court must consider the age of juvenile, the likelihood of adoption of the juvenile, the bond between the juvenile and the natural parent, the quality of the relationship between the juvenile and the proposed permanent placement, and any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2015). Here, in making its determination, the trial court made findings of fact

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reflecting consideration of the foregoing factors, including the strong and loving bond between respondent and J.J. However, the parental bond is just one factor the trial court may consider, and the court may determine that this factor is outweighed by other factors in making the best interest determination. *In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709-10 (2005), *aff'd per curiam, disc. review improvidently allowed*, 360 N.C. 475, 628 S.E.2d 760 (2006). The trial court in the instant case found that even though respondent and J.J. have a strong bond, respondent does not have the present ability to parent J.J. independently and will not have that ability in the near future. The trial court also found that J.J. has a strong loving relationship with his proposed adoptive family, that the symptoms of language impairment and “emotional dis-regulation” that J.J. had while in respondent’s care are now nearly completely resolved under the care of the proposed adoptive family, and that the strong two-parent household should aid in treating the trauma J.J. experienced while living with respondent.

We conclude that the trial court’s decision that it is in the child’s best interest to terminate respondent’s parental rights is the result of a reasoned decision. We hold that the trial court did not abuse its discretion by terminating respondent’s parental rights.

AFFIRMED.

Judges STROUD and INMAN concur.

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Report per Rule 30(e).