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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-503

Filed: 20 December 2016

Yancey County, No. 15 JT 25

IN THE MATTER OF: D.M.

Appeal by respondent from order entered 19 February 2016 by Judge Ted McEntire in Yancey County District Court. Heard in the Court of Appeals 21 November 2016.

*James O. Rice, Jr. for petitioner-appellee Yancey County Department of Social Services.*

*Alston & Bird LLP, by Ryan P. Ethridge, for guardian ad litem.*

*Richard Croutharmel for respondent-appellant.*

BRYANT, Judge.

Respondent, the mother of the juvenile Dan,<sup>1</sup> appeals from an order terminating her parental rights. After careful review, we affirm.

On 30 September 2014, Yancey County Department of Social Services (“DSS”) filed a petition alleging that Dan was a neglected and dependent juvenile. DSS stated that it became involved with the family when Dan was only two days old. At that time, DSS received a report that respondent, who was still in the hospital, “was

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<sup>1</sup> A pseudonym has been used to protect the identity of the juvenile.

IN THE MATTER OF: D.M.

*Opinion of the Court*

having serious difficulties in bonding with the juvenile. She was said by hospital staff to have cried as the baby cried and said to staff members ‘make him stop.’ She would not change [Dan’s] diaper and always asked that someone else do it for her.” Prior to giving birth to Dan, respondent and Dan’s father were living in a tent in the woods and suffered from scabies. DSS claimed that the juvenile developed a “serious” and recurring case of scabies for which the father had to seek additional medical care.

DSS alleged in the petition that respondent suffered from mental health issues, noting that she had been diagnosed as bipolar and was not taking her medication. DSS further alleged that respondent “has consistently shown an inability to control her emotions exhibiting explosive anger at the Department on several occasions including screaming and cursing while holding the baby with disregard for his emotional distress exhibited by his crying.”

On 25 July 2014, due to an altercation between herself and the juvenile’s father, respondent left the home where she had resided with the father and the juvenile. The juvenile remained in the home with the father and the paternal grandparents. Respondent was allowed visitation, but rather than focus on the child during visits, she focused on disputes with the father, and had to be “continually redirected.” DSS further claimed that respondent was belligerent and had been forced to leave the shelter where she had been living due to an altercation with other

IN THE MATTER OF: D.M.

*Opinion of the Court*

residents. DSS asserted that respondent had failed to secure stable housing or regular employment.

On 20 September 2014, the father was arrested for driving under the influence. Dan was not with the father at the time of his arrest, but was at home with the paternal grandparents. The father admitted to substance abuse issues, including the use of methamphetamine. DSS stated that it lacked confidence in the ability of either parent to provide care for the juvenile. Accordingly, DSS obtained non secure custody of the juvenile. On 7 January 2015, the trial court adjudicated Dan a neglected juvenile, based on the parents' stipulations to the allegations set forth in the juvenile petition.

On 23 May 2015, the trial court ceased reunification efforts and changed the permanent plan for the juvenile to concurrent plans of adoption and guardianship. On 5 August 2015, DSS filed a petition to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and (3) (failure to pay support). On 12 August 2015, the trial court terminated respondent's parental rights on the ground of neglect.<sup>2</sup> Respondent appeals.

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Respondent argues that the trial court erred by concluding that grounds existed to terminate her parental rights based on neglect. We disagree.

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<sup>2</sup> Although the father's parental rights were terminated in the same order in which the mother's rights were terminated, he has not appealed and is not a party to this appeal.

IN THE MATTER OF: D.M.

*Opinion of the Court*

North Carolina General Statutes, section 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233–34 (1990) (citation omitted). “The standard of appellate review is whether the trial court’s findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law.” *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted).

In the instant case, the trial court concluded that grounds existed to terminate respondent’s parental rights based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). “Neglected juvenile” is defined as:

[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, “[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)). When, however, as here, “a child has not been in the custody of the parent for a significant period of time prior to

IN THE MATTER OF: D.M.

*Opinion of the Court*

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.’ ” *Id.* (quoting *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003)). “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.’ ” *Id.* (quoting *Shermer*, 156 N.C. App. at 286, 576 S.E.2d at 407).

Here, the trial court found as fact:

- a. The juvenile lived in an environment injurious to the juvenile’s welfare and did not receive proper care or supervision from the juvenile’s parents in that the juvenile was placed in the custody of the Yancey County Department of Social Services on September 29, 2014 as a result of this neglect and has remained in the Department[']s custody since that time;
- b. That the juvenile was adjudicated a neglected juvenile [in an order entered 7 January 2015;]
- c. That the respondents have not eliminated the reasons the juvenile came into DSS custody;
- d. That the respondent parents have not [made] progress toward the goals established in their respective case plans;
- e. That the respondent parents have failed to engage in consistent mental health treatment;
- f. That the respondent mother has failed to demonstrate stable housing;

IN THE MATTER OF: D.M.

*Opinion of the Court*

g. That the respondent parents have failed to maintain stable employment;

h. That the respondent parents have failed to complete Court ordered psychological and parenting evaluations;

...

k. That the Yancey Count Department of Social Services was eventually relieved of providing further reasonable efforts to reunify the juvenile with the respondent parents in that the respondent parents failed to make reasonable progress to eliminate the conditions which led to the juvenile coming into DSS custody and such neglect [h]as continued[;]

l. That based upon the past neglect, there is a likelihood of repetition of neglect if the juvenile is returned to the custody of the respondent parents.

Respondent does not challenge these findings of fact, and they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted).

The trial court's findings demonstrate that: (1) the juvenile had been previously adjudicated neglected; and (2) that respondent had failed to comply with substantial portions of her case plan. Respondent does not contest that she failed to complete her case plan, but argues that failure to complete a case plan should not provide a basis for termination of parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). Instead, respondent contends that termination of parental rights for failure to follow a case plan should be pursued under General Statutes, section 7B-1111(a)(2), which provides for termination where

IN THE MATTER OF: D.M.

*Opinion of the Court*

[t]he parent has willfully left the juvenile 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 those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2015). Respondent further contends that should DSS elect to proceed pursuant to section 7B-1111(a)(1) rather than section 7B-1111(a)(2), DSS should still be required to demonstrate willfulness and whether poverty played a role in the respondent's inability to comply with her case plan. We disagree.

Respondent cites no authority or statutory requirement for the proposition that DSS must proceed under section 7B-1111(a)(2) where a parent has failed to comply with a case plan. Moreover, this Court has previously held that failure to comply with a case plan, where there is a prior adjudication of neglect, constitutes evidence in support of termination of parental rights pursuant to section 7B-1111(a)(1). *See In re C.M.*, 183 N.C. App. 207, 212, 644 S.E.2d 588, 593 (2007) (“The findings relating to the prior adjudication of neglect and . . . respondents’ failure to comply with the case plan established that C.M. was a neglected juvenile.”); *In re D.M.W.*, 173 N.C. App. 679, 688–89, 619 S.E.2d 910, 917–18 (2005) (Hunter, J., dissenting) (concluding that evidence that the mother previously neglected the child and failed to complete her case plan supported termination of parental rights based on N.C. Gen. Stat. § 7B-

IN THE MATTER OF: D.M.

*Opinion of the Court*

1111(a)(1)), *rev'd for reasons stated in dissenting opinion*, 360 N.C. 583, 635 S.E.2d 50 (2006). We further note that the purpose of a case plan is to rectify the conditions which led to the removal of the juvenile, which here was neglect, and to effect reunification. It necessarily follows that failure to comply with a case plan supports a determination that neglect would repeat should a child be returned to the parent. *See In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (“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.’ ” (quoting *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251–52 (1984))).

Respondent lastly argues that the trial court erroneously found a repetition of neglect solely on the basis of “past neglect.” We are not persuaded. Whether inartfully worded or a mere *lapsus linguae*, it is evident from the context of the trial court’s order that it found that there would be a repetition of neglect should the juvenile be returned to respondent’s care due to her failure to complete her case plan and rectify the conditions which led to the adjudication of neglect, and not solely due to the neglect which existed at the time of the adjudication. Respondent’s failure to obtain stable housing and employment, engage in mental health treatment, and obtain a psychological and parenting evaluation all support the trial court’s finding that neglect would repeat should the juvenile be returned to her care. *See In re Davis*, 116



IN THE MATTER OF: D.M.

*Opinion of the Court*

N.C. App. 409, 413–14, 448 S.E.2d 303, 306 (1994) (upholding finding of a probability of repetition of neglect where the respondent failed to obtain counseling, maintain a stable home and employment, and attend parenting classes). Therefore, we hold that grounds existed under our General Statutes, section 7B–1111(a)(1) to terminate respondent’s parental rights. Accordingly, we affirm the trial court’s order terminating respondent’s parental rights.

AFFIRMED.

Judges MCCULLOUGH and TYSON concur.

Report per Rule 30(e).