IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-661

Filed: 6 December 2016

Yadkin County, Nos. 14 JT 37–38

IN THE MATTER OF: L.M.C., T.J.C.

Appeal by respondent-mother from order entered 21 March 2016 by Judge William F. Brooks in Yadkin County District Court. Heard in the Court of Appeals 7 November 2016.

Finger, Roemer Brown & Mariani, by Peter R. Mariani and James N. Freeman, Jr., for petitioner-appellee Yadkin County Human Services Agency.

Lisa Anne Wagner for respondent-appellant mother.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

ELMORE, Judge.

Respondent-mother appeals from an order terminating her parental rights to L.M.C. ("Linda") and T.J.C. ("Tracy").[1] The minors' father is not a party to this appeal. We affirm.

I. Background

[1] Pseudonyms are used to protect the minors' identities.

Respondent-mother has a long history of substance abuse. Respondent-mother and her boyfriend, C.C., are the parents of Linda, born in June 2010, and Tracy, born in March 2014. In July 2014, after C.C. was released from prison, respondent-mother, C.C., Linda, and Tracy spent a few months living together as a family unit. During this time, respondent-mother started using heroin and smoking marijuana with C.C., and, while the children were home, C.C. violently assaulted her on multiple occasions, such that "she was in fear for her life." As a result, in early September 2014, respondent-mother moved in with her sister in Yadkin County. Since then, she has stayed with different people at multiple places, leaving her children in the care of various family members.

On 19 September 2014, Yadkin County Human Services Agency ("YCHSA") received a report alleging that the children were neglected. That same day, respondent-mother was arrested for felony breaking and entering a motor vehicle. Two days after pretrial release, respondent-mother was admitted to the hospital to treat the damage to her liver related to substance abuse and to detox. Days after release from the hospital, respondent-mother reunited with C.C. and they began living together again.

On 16 October 2014, YCHSA filed a petition alleging that the children were neglected, based in part on allegations of domestic violence, substance abuse, and unstable housing; and obtained nonsecure custody of the children on the same day.

After a hearing, the trial court entered a 5 December 2014 order adjudicating the children neglected and ordering respondent-mother to comply with an out-of-home services plan developed by YCHSA. This plan required her to: (1) complete substance abuse, domestic violence, and psychological assessments and follow resulting recommendations; (2) obtain and maintain employment and appropriate housing; and (3) complete parenting classes. After a permanency planning review hearing, the trial court entered a 24 September 2015 order changing the permanent plan from reunification to adoption.

On 21 October 2015, YCHSA filed a petition to terminate respondent-mother's parental rights, alleging that she: (1) neglected the juveniles; (2) willfully left them in foster care for over twelve months without showing reasonable progress in correcting the conditions resulting in the juveniles' removal; and (3) willfully failed to pay a reasonable portion of foster care costs during the preceding six months. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3). After a hearing, the trial court entered a 21 March 2016 order terminating respondent-mother's parental rights to Linda and Tracy based upon neglect and willfully leaving the children in foster care without showing reasonable progress. Respondent-mother appeals.

II. Analysis

Respondent-mother contends that the trial court erred in finding that grounds existed to terminate her parental rights. We conclude the court properly terminated her parental rights on the ground of neglect.

> At the adjudicatory stage, the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist. If the trial court concludes that the petitioner has proven grounds for termination, this Court must determine on appeal whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law. Factual findings that are supported by the evidence are binding on appeal, even though there may be evidence to the contrary. Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.
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> Under N.C. Gen. Stat. § 7B-1111(a), the trial court need only find that one statutory ground for termination exists in order to proceed to the dispositional phase and decide if termination is in the child's best interests.

In re L.A.B., 178 N.C. App. 295, 298–99, 631 S.E.2d 61, 64 (2006) (internal quotation marks, citations, and alteration omitted).

Under N.C. Gen. Stat. § 7B-1111(a)(1) (2015), a trial court may terminate parental rights upon finding that the parent has neglected the juvenile. A "neglected juvenile" is, in part, one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; . . . or who lives in an environment injurious to the juvenile's welfare . . . ." N.C. Gen. Stat. § 7B-101(15) (2015). "If there is no evidence of neglect at the time of the termination proceeding .

. . parental 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 trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

Here, the trial court made findings regarding respondent-mother's ongoing struggles with substance abuse and incarceration, and her inability to comply with her case plan:

> 30. [Respondent-mother] had almost no success in completing the tasks and recommendations contained in [the case plan] in order to regain custody of the minor children. The [case plan] drafted for each parent contained activities and goals that addressed issues that caused the minor children to be removed from the home, including provisions that provided objectives for any periods of incarceration. Parenting classes were the only activity in the [case plan] completed by [respondent-mother].
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> 33. During the time the minor children have been in the custody of the YCHSA, the parents had visitation privileges contingent upon not being incarcerated and upon passing a drug/alcohol screen if requested to do so. [Respondent-mother] visited [the children] for 13 of a possible 27 times. . . . Regarding drug screens . . . [respondent-mother] tested positive for marijuana in November, 2015 and as recently as January, 2016 for

benzodiazepines and opiates, all while being pregnant with her fourth child, on supervised probation, and allegedly participating in weekly substance abuse treatment in Orange County.

34. Throughout the time the YCHSA has had custody of the minor children, [respondent-mother] has been involved in a number of different criminal activities, including shoplifting, felony larceny and [breaking and entering], and felony drug charges in Forsyth, Surry, Wilkes, and Yadkin Counties.

35. . . . [Respondent-mother] was in jail for a probation violation from March 17, 2015 to April 30, 2015; July, 2015 to July 24, 2015 on numerous felony charges; and August, 2015 for numerous charges, including crimes involving controlled substances.

36. During the pendency of the underlying matters, [respondent-mother] submitted to a psychological assessment with Dr. Phillip Batten, which was completed on June 10, 2015. Dr. Batten had completed a prior evaluation of [respondent-mother] back in 2010, noting that "*[respondent-mother] displayed a pattern of rationalization and denial that has the potential to interfere with her accurate perception of reality, her judgment, and her planning for the future. She seemed out of touch with the emotions associated with many of her experiences.*" Dr. Batten's analysis and report from 2015 echoed similar observations regarding [respondent-mother] and counseling, substance abuse and parenting. He found that "*[respondent-mother] is intelligent enough to benefit from counseling. However, at this point in her life she seems likely to approach counseling with the attitude of, "What do I need to tell this counselor in order to be allowed to stop coming to counseling?.*" Further, Dr. Batten concluded that "*[respondent-mother's] lack of credible insight and remorse about her past pattern of behavior is not a good predictor of lasting behavior change. . . . Given her history and her attitude about accepting help, [respondent-mother] seems*

> *like a very good candidate for persisting in the way of life that has been her pattern since she was a teenager.*"
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> 38. . . . [Respondent-mother] admitted and the Court finds as fact that [respondent-mother] has done damage to the children that she can't fix, and that both parents have engaged in a pattern of incarceration, drug use and domestic violence.

As respondent-mother does not challenge these findings, they are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal."). These findings reveal that, from the 5 December 2014 neglect adjudications until the 10 March 2016 termination hearing, respondent-mother failed to change the conditions which led to the adjudications of neglect and failed to make reasonable progress demonstrating that she could adequately care for the children. In addition to respondent-mother's limited progress on her case plan during this time, she failed drug tests despite being on supervised probation and pregnant with her fourth child and had been involved in multiple property theft and drug crimes resulting in several periods of incarceration. Additionally, a doctor who conducted psychological assessments of respondent-mother opined that she was unlikely to change her behavior due to her rationalizations and denial, as well as her lack of credible insight and remorse for her past behavior. Based on these findings, the trial court properly concluded that the

"likelihood of neglect of the minor children is probable if they are returned" to respondent-mother.

Accordingly, we affirm the trial court's conclusion that grounds existed based upon neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate respondent-mother's parental rights to the juveniles. In light of our disposition, we need not address respondent-mother's remaining challenge to the trial court's conclusion that grounds to terminate her parental rights also existed under N.C. Gen. Stat. § 7B-1111(a)(2). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat.] § 7B-1111 is sufficient to support a termination.").

AFFIRMED.

Chief Judge McGEE and Judge DAVIS concur.

Report per Rule 30(e).