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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-850

Filed: 21 February 2017

Surry County, Nos. 14 JT 53, 54

IN THE MATTER OF: B.W.S. & A.N.S.

Appeal by respondent from order entered 6 June 2016 by Judge William F. Southern, III in Surry County District Court. Heard in the Court of Appeals 30 January 2017.

*Campbell Law Group, PLLC, by Susan Curtis Campbell, for Surry County Department of Social Services, petitioner-appellee.*

*James N. Freeman, Jr. for guardian ad litem.*

*N. Elise Putnam, for respondent-appellant.*

ZACHARY, Judge.

Respondent-mother appeals from an order terminating her parental rights to her children “Blake” and “Alice.”<sup>1</sup> For the reasons that follow, we affirm the trial court’s order.

### **I. Background**

Blake and Alice were born eleven months apart in 2011. Respondent-mother subsequently married a man who will be identified as “Mr. C.” On 15 July 2014, the

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<sup>1</sup> Pseudonyms are used to protect the identities of the minor children and for ease of reading.

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Surry County Department of Social Services (“DSS”) filed a petition seeking an order directing respondent-mother and Mr. C. to cease any obstruction of or interference with the investigation by DSS of a report concerning the alleged abuse, neglect, or dependency of the children. The court allowed the petition and the children underwent medical evaluations, which disclosed that both children suffered from extensive dental caries requiring surgery.

On 2 September 2014, DSS filed juvenile petitions alleging that the children were neglected juveniles. On 26 November 2014, the court entered an order adjudicating Blake and Alice to be neglected juveniles. The court found that on 31 August 2014, respondent-mother and Mr. C. were involved in an episode of domestic violence in the presence of the juveniles, which required intervention by law enforcement officers. The court also found that respondent-mother had failed to comply with a previous order requiring her to obtain comprehensive mental health, substance abuse, and domestic violence assessments. The court ordered respondent-mother (1) to obtain and maintain a suitable residence and gainful employment, (2) to obtain a substance abuse and mental health assessment and to comply with recommended treatment; and (3) to comply with random drug screens. The court permitted respondent-mother to have weekly supervised visitation with the children, with a permanent plan of family reunification.

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On 23 September 2015, respondent-mother was arrested after her probation officer conducted an unannounced search of her home and found evidence of the manufacture of methamphetamine and the cultivation of marijuana in respondent-mother's bedroom and the laundry room. Respondent-mother was incarcerated from that date until 25 November 2015, when she was bonded out of jail. Ultimately, respondent-mother was convicted of multiple drug-related offenses arising out of that arrest and was again placed on probation.

At a permanency planning hearing held on 4 February 2016, the court changed the permanent plan from family reunification to termination of respondent-mother's parental rights and adoption, with a concurrent plan of reunification of the children with respondent-mother. On or about 19 February 2016, DSS filed a motion to terminate respondent-mother's parental rights. The court conducted a hearing on 27 April 2016, and filed an order on 6 June 2016 that terminated the parental rights of respondent-mother on the grounds that: (1) respondent-mother had neglected the children and the neglect was likely to continue in the future; and (2) respondent-mother had willfully left the children in foster care for more than twelve months without showing that reasonable progress had been made in correcting the conditions which led to the removal of the children. *See* N.C. Gen. Stat. § 7B-1111(a)(1),(2) (2015). Respondent-mother timely appealed.

## **II. Adjudication Stage**

A. Standard Of Review

Every termination of parental rights proceeding involves a two-stage process: the adjudication stage and the disposition stage. *In re D.H.*, 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014) (citation omitted). During the adjudication stage, 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). We review the trial court’s adjudication to determine “whether the findings of fact are supported by clear, cogent and convincing evidence and whether the[] findings [of fact] . . . support the conclusions of law.” *In re Shepard*, 162 N.C. App. 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 fact are binding on appeal, as they are presumed to be supported by competent evidence. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). 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).

B. Challenges To The Trial Court's Findings of Fact

Respondent-mother first challenges several of the court's findings of fact as not being supported by clear, cogent, and convincing evidence. We find evidentiary support for each of the challenged findings.

Respondent-mother challenges finding of fact number 49, in which the court found that respondent-mother failed to attend the children's medical or dental appointments after 29 May 2015, although she was notified of them. Respondent-mother argues that this finding is not supported by the evidence because she testified that she was not notified of the appointments. However, her testimony is directly contradicted by the testimony of the protective services agent averring that she did notify respondent-mother. "[I]t is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (citation omitted). The appellate court "cannot reweigh the evidence or credibility as determined by the trial court." *In re P.A.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 772 S.E.2d 240, 244 (2015). As noted above, if the 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 Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988) (citation omitted). Here, the trial court found the testimony of the

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protective services agent to be more credible than that of respondent-mother regarding this matter. The finding of fact is therefore conclusive and binding.

In challenged finding of fact number 53, the court found that respondent-mother failed to follow through with mental health/substance abuse counseling services as recommended by the assessment she received at Daymark Recovery Services on 20 January 2015. Respondent-mother argues that this finding is incorrect because the assessment stated that respondent-mother “*may* benefit from Recovery Management, but clinician *does not* recommend intensive treatment or psychiatric services at this time.” (emphasis supplied in respondent-mother’s brief). The protective services agent testified that she spoke with a representative of Daymark Recovery Services, who informed her that “Recovery Management” consisted of counseling services. Whether the counseling was merely “suggested” as argued by respondent-mother in her brief or “recommended” as found by the court, we find that the gravamen of the finding and its key relevance lie in the fact that respondent-mother did not undergo Recovery Management counseling services to address her mental health or substance abuse issues. Respondent-mother does not dispute this fact.

In challenged finding of fact number 55, the court found that it had been recommended that respondent-mother receive counseling to address domestic violence issues, but she did not obtain the recommended counseling. Respondent-

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mother argues that this finding is not correct because the report of the domestic violence counselor indicated that he recommended a “follow up appointment . . . before ruling out that domestic [violence] treatment is warranted.” She submits that a recommendation of one follow-up appointment is not equivalent to a recommendation of counseling to address domestic violence issues. As with finding of fact number 53, we conclude that the key relevance of this finding is the fact that respondent-mother did not attend the follow-up appointment, and she did not otherwise engage in domestic violence counseling.

In findings of fact number 66, 69-70, 72-75, 77, 101 and 103, the court found that respondent-mother had not availed herself of opportunities and services that would assist her in achieving lasting stability for herself and the children; that she had not addressed or corrected the conditions that resulted in the removal of the children from her care; that she had evidenced “an inability to recognize” or utilize the services provided by DSS; that she had made “[n]o identifiable progress” on her case plan with regard to domestic violence and substance abuse; that she had refused drug screens and had been convicted of serious crimes related to illegal controlled substances, yet she still had not sought substance abuse treatment; that the concerns addressed by the court regarding substance abuse, domestic violence, and overall instability of the parents in the adjudication order entered on 23 October 2014 still remained; and that she had not made any reasonable progress in correcting the

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conditions that led to the removal of the children from her custody. Respondent-mother contends that these findings are incorrect. She submits that because she (1) had not engaged in any episode of domestic violence for approximately twenty months and had attended the domestic violence assessment, (2) had the children medically evaluated and attended a majority of the children's medical appointments, (3) had engaged in substance abuse treatment with TASC and produced negative drug screens, (4) had completed parenting classes and progressed to visits with the children in her home, and (5) had obtained adequate housing, she had made reasonable progress in correcting the conditions that caused the removal of the children from her home.

Other evidence and unchallenged findings, however, support the trial court's findings. It is undisputed that in September 2015, after the children had been in foster care for approximately one year, respondent-mother was arrested and subsequently convicted of violations of the controlled substances laws, including the illegal manufacture and cultivation of those substances in her home, despite her denials of substance abuse. Over the course of several months, respondent-mother did not submit to drug screens requested by DSS. Just two days prior to her arrest, respondent-mother attended the domestic violence assessment, in which the counselor noted that it appeared respondent-mother had a substance abuse issue, primarily opioid use, and that her "guarded" responses called into question the



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accuracy of her statements regarding lack of substance abuse and domestic violence. As a result of her arrest and the use of the home for illegal drug activity, respondent-mother was evicted. Although respondent-mother subsequently obtained housing, she did not inform DSS until months later. Moreover, respondent-mother did not have any contact with DSS and the children from 30 September 2015 until 5 February 2016, despite the fact that she had signed an agreement on 30 September 2015 to contact DSS upon her release from incarceration, which occurred on 25 November 2015, so that visits with the children could be resumed. In fact, DSS was unaware of respondent-mother's whereabouts from 25 November 2015 until 11 February 2016.

We conclude that the trial court's findings of fact are supported by clear, cogent, and convincing evidence.

C. Termination Of Parental Rights Based On Neglect

Respondent-mother next contends that the remaining findings of fact fail to address her fitness as a parent and are insufficient to support a conclusion of law that she neglected the juveniles and is likely to neglect them in the future. According to respondent-mother, DSS failed to prove by clear, cogent, and convincing evidence that neglect existed at the time of the termination hearing. Respondent-mother also maintains that the court's conclusion that her neglect of the children was likely to continue was improperly based solely on past occasions of neglect. We disagree.

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A juvenile is neglected if he or she “does not receive proper care, supervision or discipline from the juvenile’s parent,” has been abandoned, is not provided necessary medical or remedial care, or “lives in an environment injurious to the juvenile’s 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 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). In addition, the 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).

Evidence of a child’s neglect may take many forms. “Neglect may be manifested in ways less tangible than failure to provide physical necessities. Therefore, on the question of neglect, the trial judge may consider, in addition, a parent’s complete failure to provide the personal contact, love, and affection that inheres in the parental relationship.” *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982). A relevant consideration in determining whether there is a probability of neglect at the time of the termination hearing is the parent’s progress, or lack thereof, in correcting the conditions that led to the original adjudication of

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neglect. *In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011). The court may also conclude that recent improvements in the parent's situation are counterbalanced by other factors demonstrating a probability of repetition of neglect. *See In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004) (holding that although mother had made some progress immediately prior to termination hearing, the mother's prolonged inability to improve her situation supported court's conclusion that she failed to make reasonable progress in correcting the conditions that resulted in the removal of the children); *Smith v. Alleghany Cty. Dep't of Social Services*, 114 N.C. App. 727, 732, 443 S.E.2d 101, 104, *disc. review denied*, 337 N.C. 696, 448 S.E.2d 533 (1994) (holding that although mother made recent improvements in her psychological and living conditions, the trial court properly concluded that probability of repetition of neglect was great based on the history of the case and other factors).

Here, the court took judicial notice of the original adjudication order in which the court adjudicated the juveniles to be neglected based on the parents' engagement in domestic violence, substance abuse, lack of stable employment and housing, and failure to meet the children's medical needs. The court found, as noted above, that these concerns still remained at the time of the termination hearing. Respondent-mother did not follow through with recommendations of counseling and treatment to address substance abuse and domestic violence issues. She was unemployed at the time of the termination hearing.

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The findings of fact in the termination of parental rights order further reflect that during the time in which the children were in foster care, respondent-mother was arrested on charges of manufacturing methamphetamine and growing marijuana in her residence. Respondent-mother was incarcerated from 23 September 2015 through 25 November 2015, during which time she did not contact DSS, the guardian *ad litem*, or the foster parents to inquire about her children, and did not write letters or send cards to her children. Following her release from incarceration, respondent-mother did not contact DSS to resume visits with the children, inquire into their well-being, or work toward reunification with the children. Respondent-mother did not celebrate the 2015 Thanksgiving and Christmas holidays with her children or acknowledge the children's birthdays, although she did resume monthly visits with the children after the termination motion was filed. She did not attend any medical appointments of the children after 29 May 2015, and did not take advantage of the opportunity for sharing parenting with the foster parents so that she could be in regular contact with the foster parents and the children.

We conclude that the court's findings of fact support its conclusion of law that a ground existed to terminate respondent-mother's parental rights on the basis of neglect. Having affirmed the determination of one ground, we need not address her arguments concerning the other ground. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

### **III. Disposition Stage**

#### **A. Standard Of Review**

Once the trial court determines that one or more grounds exist to justify terminating a parent's rights, the court must proceed to the disposition stage, where it makes a discretionary determination as to whether terminating the parent's rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2015). In determining whether termination of parental rights is in the best interest of a juvenile, the court must consider the age of the 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 "[a]ny [other] relevant consideration." *Id.* The court's decision may be reversed for abuse of discretion only if the appellant can show that the court's ruling "was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

#### **B. Best Interest Of Blake And Alice**

Of the statutory factors that the trial court was required to consider, respondent-mother contends that the court abused its discretion in determining that termination of her parental rights was in the best interest of Blake and Alice because a strong bond existed between the children and their mother, and the children expressed a desire to return to respondent-mother's home. However, as this Court

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noted in *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 parental bond is just one factor that the court may consider, and the court may determine that this factor is outweighed by other factors in making the determination of the juvenile's best interest.

In the instant case, the court found that the children's bonds with their mother were "only fairly strong" due in part to her failure to take actions to strengthen the bond, including her failure to visit the children consistently after September 2015. In contrast, the court found that both children have a strong and loving bond with the foster parents and the foster parents' other child, that the foster parents have taken the children to numerous medical, dental, and therapeutic appointments since September 2014, that the children look to the foster parents to meet their needs, that the foster parents have exhibited great love and concern that the children have the best possible futures, and that the foster parents are committed to "serving the children's best interest to thrive."

The court's findings of fact support the court's determination that terminating respondent-mother's parental rights was in the best interest of Blake and Alice. Thus, the court's order must be upheld.

**IV. Conclusion**

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We conclude that the court's decision is well-reasoned, and that the court did not abuse its discretion by terminating respondent-mother's parental rights. Accordingly, the order is affirmed.

AFFIRMED.

Judges CALABRIA and INMAN concur.

Report per Rule 30(e).