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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-589

Filed: 21 November 2017

Cleveland County, No. 14 JT 100

IN THE MATTER OF: L.C.

Appeal by respondent-mother from order entered 3 March 2017 by Judge Larry J. Wilson in Cleveland County District Court. Heard in the Court of Appeals 19 October 2017.

*Cerwin Law Firm, P.C., by Mark A. Wilson, for petitioner-appellee father.*

*J. Thomas Diepenbrock for respondent-appellant mother.*

BRYANT, Judge.

Respondent appeals from an order terminating her parental rights to her minor child L.C. (“Lacy”).<sup>1</sup> After careful consideration, we vacate and remand.

Respondent and petitioner were in a relationship for several months, which ended around March 2014. Respondent gave birth to their child, Lacy, in September 2014. The next day, respondent informed the Cleveland County Department of Social

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<sup>1</sup> Pursuant to N.C. R. App. P. 3.1(b) (2017), a pseudonym is used to protect the identity of the juvenile and for ease of reading.

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Services (“DSS”) that she had no power or water in her home and had not had power or water since February 2014. DSS took note that respondent had four children previously removed from her custody and that she was continuously reluctant to address her mental health issues. DSS filed a petition alleging that Lacy was neglected and dependent and obtained nonsecure custody the same day. Following a 10 September 2014 hearing, the trial court entered an order finding respondent to be incompetent within the meaning of Rule 17 of the North Carolina Rules of Civil Procedure and appointing a guardian ad litem in a substitutive capacity. *See* N.C. Gen. Stat. § 1A-1, Rule 17 (2015); *id.* § 7B-1101.1. The trial court held an adjudicatory and dispositional hearing on 22 October 2014, after which the court entered an order on 30 October 2014 adjudicating Lacy to be a neglected and dependent juvenile and granting custody of Lacy to the petitioner-father.

On 4 March 2016, petitioner filed a petition to terminate respondent’s parental rights, alleging neglect and willful abandonment as grounds for termination. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (7) (2015). The trial court entered an order on 29 June 2016 appointing a guardian ad litem for respondent. Following a 17 January 2017 hearing, the trial court entered an order on 3 March 2017 terminating respondent’s parental rights after adjudicating the existence of neglect. Respondent gave notice of appeal on 21 March 2017.

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On appeal, respondent contends that the trial court's findings did not support its conclusion that grounds existed to terminate respondent's parental rights on the basis of neglect. We agree.

General Statutes, section 7B-1111 provides that the trial court may terminate parental rights upon finding that "[t]he parent has abused or neglected the juvenile." N.C. Gen. Stat. 7B-1111(a)(1) (2015). A "neglected juvenile" is defined in relevant part as one "who does not receive proper care, supervision, or discipline from the juvenile's parent . . . ; 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 . . . ." *Id.* § 7B-101(15).

Termination of parental rights for neglect may not be based solely on past conditions that no longer exist. *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). While prior adjudications of neglect may be considered by the trial court, a petitioner seeking termination of a parent's parental rights must normally prove that neglect exists at the time of the termination of parental rights hearing in order for the court to adjudicate neglect. *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). However, "[w]here, as here, a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, the trial court must employ a different kind of analysis to determine whether the evidence supports a finding of neglect." *In re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003)

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(citation omitted). While “evidence of neglect by a parent prior to losing custody of a child . . . is admissible in . . . proceedings to terminate parental rights[,] [t]he 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.*” *Ballard*, 311 N.C. at 715, 319 S.E.2d at 232 (emphasis added).

In this case, the trial court made findings that respondent rarely contacted petitioner to establish visitation with Lacy or ask about her well-being, was not receiving any mental health treatment despite having been diagnosed with depression and post-traumatic stress disorder, and was not currently employed. However, the court made no ultimate finding that a repetition of neglect was probable if Lacy were returned to respondent’s care, as was required to adjudicate the existence of neglect as grounds for termination of respondent’s parental rights. For the reasons stated herein, we reverse the trial court’s order terminating respondent’s parental rights to Lacy and remand for further proceedings consistent with this opinion. *See In re L.L.O.*, \_\_ N.C. App. \_\_, \_\_, 799 S.E.2d 59, 63–64 (2017) (vacating and remanding where the “termination order contain[ed] no finding of a probability of a repetition of neglect”). “We leave to the discretion of the trial court whether to hear additional evidence.” *In re F.G.J.*, 200 N.C. App. 681, 695, 684 S.E.2d 745, 755 (2009).

REVERSED AND REMANDED.

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Judges STROUD and ZACHARY concur.

Report per Rule 30(e).