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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1309

Filed: 1 October 2019

Robeson County, Nos. 11 JT 318, 12 JT 281, 16 JT 226

IN THE MATTER OF: C.S., J.M., J.H.

Appeal by respondent-mother from order entered 6 September 2018 by Judge Herbert L. Richardson in Robeson County District Court. Heard in the Court of Appeals 3 September 2019.

Jennifer A. Clay for petitioner-appellee Robeson County Department of Social Services.

Mercedes O. Chut for respondent-appellant mother.

McGuireWoods LLP, by Gagan Gupta, for guardian ad litem.

BRYANT, Judge.

Where the findings of fact are supported by clear, cogent and convincing evidence, which, in turn, support that grounds existed to terminate respondent-mother's parental rights, we affirm the trial court's ruling.

On 25 July 2016, the Robeson County Department of Social Services ("DSS") obtained nonsecure custody of respondent-mother's¹ minor children C.S. (born

¹ The father is not a party to this appeal.

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November 2008), J.M. (born April 2012), and J.H. (born December 2013) (collectively, “the children”). A review of the record shows that DSS has been involved with respondent-mother since 2009. On this occasion, DSS filed petitions alleging that the children were neglected due to domestic violence and substance abuse occurring in respondent-mother’s home, which created “an environment injurious to the [children]’s welfare.”

The petitions described, in part, the events leading to the removal of the children from the home. On 24 July 2016, DSS received a report that respondent-mother and her husband were in a physical altercation in the presence of the children. Respondent-mother’s husband had attempted to shoot her while the children were present in the home. Later, while on her way to pick the children up from their grandmother’s house, respondent-mother was observed by a highway patrol trooper “swerving all over the highway[.]” The trooper transported respondent-mother back to her home.

When DSS arrived, respondent-mother appeared to be “impaired by a substance[,] due to [her] slurred speech and balance being unstable[;]” and she had “a black eye, lacerations to both of her hands, [a] busted lip, and blood on her clothes.” Her home was described as “demolished” in that “there [were] broken windows, holes in the walls, and blood all over the home.” Respondent-mother stated that “she did not want her children and that she could go out and make more babies.” Respondent-

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mother was taken to the hospital where she was found to have a blood alcohol level of .08 and tested positive for benzodiazepines, opiates, and cocaine. The children were immediately removed and placed in foster care.

The trial court held a hearing on DSS's petitions on 17 November 2016 and adjudicated the children to be neglected juveniles. In its disposition order, the trial court imposed a case plan which required respondent-mother "to address mental health, employment, stable housing, anger management/domestic violence, parenting, and [to] submit to random drug screens" before reunification with the children could be considered. At the time, respondent-mother was enrolled at a residential treatment facility for substance abuse. By December 2016, respondent-mother was discharged from the facility after testing positive for a non-prescribed medicine. In February 2017, respondent-mother entered into a 120-day residential substance abuse treatment program and was discharged in June 2017.

A permanency planning hearing was held on 17 January 2018. The trial court ceased reunification efforts after finding that respondent-mother tested positive on multiple occasions leading up to the hearing: a positive drug test for cocaine in August 2017 and October 2017; and a positive drug test for benzodiazepines in December 2017. The permanent plan was changed to termination of parental rights and adoption.

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On 10 April 2018, DSS filed a motion to terminate respondent-mother's parental rights. After hearing the evidence presented, the trial court terminated respondent-mother's parental rights on 6 September 2018 finding that terminating her parental rights was in the best interest of the children. Respondent-mother filed a timely notice of appeal.

On appeal, respondent-mother argues the trial court erred by terminating her parental rights based on the following grounds: (1) neglect, (2) willful failure to make reasonable progress to correct the conditions that led to the children's removal from the home, and (3) willful failure to pay reasonable cost of care for the children. We first consider respondent-mother's argument that the trial court erred in concluding that she neglected the children. For the following reasons, we disagree.

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221–22, 591 S.E.2d 1, 6 (2004) (internal citation and quotation marks omitted). “If clear, cogent, and convincing evidence is present in the record to support a finding, it will not be disturbed, even in the face of evidence to the contrary.” *Matter of A.L.L.*, ___ N.C. App. ___, ___, 802 S.E.2d 598, 608 (2017).

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Unchallenged findings of fact are deemed supported by the evidence and the appellant is bound by them on appeal. *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014).

“Termination of parental rights is a two-step procedure.” *Shepard*, 162 N.C. App. at 221, 591 S.E.2d at 5. Under section 7B-1111 of our General Statutes, the trial court may terminate parental rights upon finding that the parent has neglected the juvenile and the juvenile is a neglected juvenile within the meaning of N.C.G.S. § 7B-101. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2019); *see also id.* § 7B-101(15) (A “neglected juvenile” is defined as a juvenile who does not receive “proper care, supervision, or discipline; or who has been abandoned; . . . or who lives in an environment injurious to the juvenile’s welfare[.]”). After the petitioner proves that termination of parental rights is warranted under subsection (a)(1) for neglect, the trial court then determines whether it is in the best interests of the child to terminate parental rights. *See id.* § 7B-1110.

“[E]vidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights.” *Matter of Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). A prior adjudication of neglect, standing alone, is not sufficient to support termination when a child has been removed from the home for a significant period of time; however, the trial court may consider “evidence of prior neglect and the

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probability of a repetition of neglect” if the child was to return to the parent’s care. *Id.* “The trial court must . . . consider any evidence of changed conditions since the prior adjudication of neglect and make an independent determination of whether neglect authorizing termination of the respondent’s parental rights existed at the time of the termination hearing.” *Matter of A.B.*, __ N.C. App. __, __, 799 S.E.2d 445, 449 (2017) (citation and quotation marks omitted).

Here, in the trial court’s order terminating parental rights to the children, the trial court made extensive findings concerning respondent-mother’s prior neglect of the children, her substance abuse problem, and her interactions with her husband—all of which led to the removal of the children:

8. The Robeson County Department has been involved with [respondent-mother] since 2009.

. . . .

14. On September 9, 2011, Robeson County Department of Social Services received another neglect referral regarding [respondent-mother] and her family.

15. On October 27, 2011, a Juvenile Petition was filed . . . in regards to domestic violence and the children were placed in a licensed foster home.

16. On December 23, 2011, a joint staffing decision was made regarding the referral received on September 9, 2011. The agency substantiated neglect for improper supervision and domestic violence. . . .

17. On May 9, 2012, the children were returned to the custody of [respondent-mother] and services were closed.

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....

21. On September 18, 2012, the agency could no longer ensure the safety of the children without court intervention; therefore, a juvenile petition and non-secure custody order were filed[.] The children were placed with relatives.^[2]

....

23. The children were returned to the custody of [respondent-mother] on or about November 14, 2014.

....

25. On July 24, 2016, Robeson County Department of Social Services received a neglect referral due to domestic violence, injurious environment[,], and substance use. On Call Social Worker responded to the report.

....

34. On July 24, 2016, On Call Social Worker Ashley Faulk was informed by [the hospital] that [respondent-mother] had a blood alcohol level of .8 and tested positive for [benzodiazepines], [o]piates, and [c]ocaine.

35. On July 24, 2016, a Juvenile Petition and Non-Secure Custody Order were filed. The children were placed in licensed foster homes.

....

53. On September 20, 2016, [respondent-mother] informed Social Worker that she used “crack yesterday.”

....

² The record reveals that C.S. and J.M. were adjudicated as neglected juveniles on 18 January 2013.

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55. On September 26, 2016, [respondent-mother] . . . entered into residential treatment at Our House.

....

57. On December 2, 2016, Our House Director . . . informed Social Worker that [respondent-mother] received a positive drug screen following her Thanksgiving Holiday.

....

59. On December 27, 2016, Our House Treatment Facility informed Social Worker that [respondent-mother] is being discharged today due to a positive drug screen for medication that she [did] not have a prescription for.

....

61. On January 3, 2017, [respondent-mother] stated to Social Worker that “treatment will not help me.” [Respondent-mother] stated that if she wants to use, she will use and she does not have a problem.

....

63. On January 5, 2017, Social Worker . . . and [respondent-mother] contacted Doves Nest for inpatient treatment.

....

88. On June 7, 2017, . . . Clinical Supervisor with Doves Nest informed Social Worker . . . that [respondent-mother] completed her 90[-]day review [for inpatient treatment] on May 18, 2017 and the projected discharge date [was] June 14, 2017.

....

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92. On June 8, 2017, . . . Clinical Supervisor with Doves Nest informed Social Worker that [respondent-mother] would be discharged on June 9, 2017 . . . [and] that “[respondent-mother] could not wait to leave and [respondent-mother’s husband] arrived unannounced and picked her up[.]”

. . . .

127. On August 11, 2017, . . . [respondent-mother’s] drug screen dated August 4, 2017, was positive for cocaine.

. . . .

145. On November 7, 2017, Social Worker received a faxed copy of [respondent-mother’s] drug screen dated October 30, 2017[,] and it was positive for cocaine.

. . . .

159. On January 8, 2018, Social Worker received a fax . . . regarding a drug screen for [respondent-mother] dated December 22, 2017, and it was positive for benzodiazepines.

. . . .

167. On February 1, 2018, [respondent-mother’s] drug screen dated January 26, 2018, was positive for cocaine, [m]arijuana[,] and [t]razadone.

. . . .

170. On April 25, 2018, [respondent-mother] tested positive for [g]abapentin and marijuana[.] But she did not have a current prescription for [g]abapentin.^[3]

. . . .

³ Although respondent-mother contends on appeal that FOF 168 is not supported by the evidence, respondent-mother later admits in her brief that she tested positive for drugs in April 2018.

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174. On June 12, 2018, Social Worker . . . was notified that [respondent-mother who was pregnant at the time] was in Texas with her husband and would not be back . . . until after her baby was born.^[4]

. . . .

177. [Respondent-mother] presented evidence that she lives in [the] home with her husband. . . .

. . . .

179. [Respondent-mother] signed her Family Services Case Plan on August 23, 2016. [Respondent-mother] has still [sic] not corrected the issues that brought her children into the custody of the Robeson County Department of Social Services on July 24, 2016.

. . . .

182. [Respondent-mother] completed treatment at Doves Nest, but continues to test positive.

. . . .

184. [Respondent-mother] has willfully left the children, [J.H., C.S., and J.M.,] in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the [trial] court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juveniles. *There is a high likelihood that the neglect would continue.*

(emphasis added).

⁴ Respondent-mother also contends that FOF 174 is not supported by the evidence, but admits in her brief that she was pregnant and living in Texas with her husband.

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Based on these findings, the trial court concluded, “That grounds for termination of parental rights exist under N.C.G.S. [§] 7B-1111, *et seq.* and it is in the best interest of the minor children, [C.S., J.M., and J.H.,] that the parental rights of the children’s mother, [respondent-mother] . . . should be terminated.”

Respondent-mother challenges the trial court’s findings of fact 179, 182, and 184⁵ in arguing that the evidence did not support a likelihood of repetition of neglect or that “[respondent-mother] had a substance abuse problem or continued to abuse drugs and alcohol by the termination hearing.” However, respondent-mother’s argument is without merit as the unchallenged findings support that the children would be at risk of further neglect if they were to return to respondent-mother’s care. We particularly note—and respondent-mother does not dispute—that prior to the termination hearing, respondent-mother continued to live with her husband, with whom she shares a history of domestic violence, and tested positive at her drug screening just four months prior to the termination of parental rights hearing. This further supports the trial court’s finding that “[t]here is a high likelihood that the neglect would continue.”

The trial court—having carefully weighed the evidence and found it to be clear, cogent, and convincing evidence to terminate parental rights—then properly

⁵ We note that respondent-mother challenges several other findings from the trial court’s order; however, we only address the findings relevant to the trial court’s conclusion of neglect that respondent-mother challenges on appeal.

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concluded that termination of respondent-mother's parental rights was in the best interest of the children.

Because we affirm the trial court's termination of her parental rights based on neglect pursuant to N.C.G.S. § 7B-1111(a)(1), we do not address respondent-mother's arguments regarding termination pursuant to N.C.G.S. § 7B-1111(a)(2) and (3). *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) (“[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.” (citation and quotation marks omitted)).

Accordingly, the trial court's ruling is

AFFIRMED.

Chief Judge McGEE and Judge BROOK concur.

Report per Rule 30(e).