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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-105

Filed: 5 November 2019

Cabarrus County, No. 15JT4, 15JT5

IN THE MATTER OF: J.S.K., J.E.K.

Appeal by Respondent from order entered 26 September 2018 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 18 September 2019.

Hartsell & Williams, PA, by Austin “Dutch” Entwistle, III, for the Petitioner-Appellee.

Mercedes O. Chut for the Respondent-Appellant.

Michelle S. Spak for the Appellee Guardian ad Litem.

BROOK, Judge.

Respondent Erica Moser (“Mother”) appeals from the trial court’s order adjudicating two minor children of hers neglected, dependent, and abandoned juveniles, finding that she failed to make reasonable progress, and finding that grounds existed for termination of her parental rights existed under N.C. Gen. Stat. § 7B-1110(a)(9). We affirm.

I. Background

IN RE J.S.K., J.E.K. II

Opinion of the Court

The facts of this case are set out more fully in our opinion in a prior appeal, *see In re J.S.K, J.E.K.*, ___ N.C. App. ___, 807 S.E.2d 188 (2017), and we recount only those necessary to resolve the present appeal. On 10 April 2018, the Cabarrus County Department of Human Services (the “Department”) made motions in the cause to terminate the parental rights of Mother to her minor children, J.S.K. and J.E.K. The motions were predicated on petitions alleging neglect filed in Cabarrus County District Court on 16 January 2015. The motions for termination of Mother’s parental rights to J.S.K. and J.E.K. were made on the basis of neglect, failure to make reasonable progress, failure to pay child support, dependence, abandonment, and the termination of Mother’s parental rights to another one of her children.

The matter came on for a hearing on 9 August 2018 before the Honorable Christy E. Wilhelm in Cabarrus County District Court. Judge Wilhelm presided over a two-day adjudicatory hearing, adjudicating J.S.K. and J.E.K. to be neglected, dependent, and abandoned juveniles. At the conclusion of a one-day dispositional hearing on 13 August 2018, Judge Wilhelm determined that termination of Mother’s parental right rights to J.S.K. and J.E.K. was in the best interest of the children. Judge Wilhelm entered an order terminating Mother’s parental rights to J.S.K. and J.E.K. on 26 September 2018. Mother entered timely written notice of appeal of that order on 25 October 2018.

II. Standard of Review

“On appeal, our standard of review for the termination of parental rights is whether the trial court’s findings of fact are based on clear, cogent[,] and convincing evidence and whether the findings support the conclusions of law.” *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003) (internal marks and citation omitted).

“The trial court’s conclusions of law are reviewable *de novo* on appeal.” *In re D.M.M. & K.G.M.*, 179 N.C. App. 383, 385, 633 S.E.2d 715, 715 (2006) (internal marks and citation omitted).

III. Analysis

Mother argues that the trial court erred (1) in adjudicating the juveniles to be neglected and dependent, (2) in adjudicating the juveniles to be abandoned, (3) in finding that she failed to make reasonable progress, and (4) in finding that grounds for termination of her parental rights existed under N.C. Gen. Stat. § 7B-1110(a)(9). However, because we hold that the trial court’s findings that the juveniles were neglected were supported by clear, cogent, and convincing evidence, we need not reach the trial court’s findings and conclusions that the juveniles were dependent, that they had been abandoned, that she failed to make reasonable progress, and that grounds existed under N.C. Gen. Stat. § 7B-1110(a)(9).

Though multiple grounds for the termination of parental rights may exist in a particular case, only one ground is necessary to support a trial court’s order terminating parental rights. *In re Pierce*, 356 N.C. 68, 75, 565 S.E.2d 81, 86 (2002).

Opinion of the Court

See also N.C. Gen. Stat. § 7B-1110(a) (2017) (“After an adjudication that one or more grounds for terminating a parent’s rights exist, the court shall determine whether terminating the parent’s rights is in the juvenile’s best interest.”). N.C. Gen. Stat. § 7B-101(15) defines a neglected juvenile as follows:

Any juvenile less than 18 years of age . . . whose parent . . . does not provide proper care, supervision, or discipline; 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 the custody of whom has been unlawfully transferred under [N.C. Gen. Stat. §] 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101(15) (2017). As this Court has held,

[w]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 also consider evidence of changed conditions in light of the history of neglect by the parent and the probability of a repetition of neglect.

In re Shermer, 156 N.C. App. 281, 286-87, 576 S.E.2d 403, 407 (2003). “[V]isitation by the parent is a relevant factor in such cases.” *Id.* at 287, 576 S.E.2d at 407.

The trial court’s findings regarding the prior adjudications of neglect of J.S.K. and J.E.K. and their siblings and Mother’s failure to financially support J.S.K. and J.E.K. supported its adjudication of J.S.K. and J.E.K. as neglected juveniles because

Opinion of the Court

they demonstrated the probability of a repetition of neglect in light of the history of neglect and the absence of changed circumstances. The court noted that J.S.K. and J.E.K. had been previously adjudicated neglected and that since that prior adjudication of neglect of J.S.K. and J.E.K., two of Mother's other children were adjudicated neglected and her parental rights to one had been terminated. The sibling of J.S.K. and J.E.K. adjudicated neglected to whom Mother's parental rights had not been terminated was in guardianship placement with the child's paternal grandmother, and the trial court found that Mother had made no payments for the support of J.S.K. and J.E.K. in the six months prior to the filing of the motion to terminate her parental rights, and that the only payments of financial support made were non-voluntary payments. Regarding visitation, the trial court found that concerns surfaced regarding Mother's visitation of J.S.K. and J.E.K. earlier in the case when the goal was still reunification; that visitation had ceased by November 2015; and that while Mother scheduled a parenting education appointment in May 2016, when she would have had an opportunity to visit J.S.K. and J.E.K., she did not attend the appointment, reporting in July 2016 that "she had too much going on to do parenting education." After losing visitation privileges when reunification efforts ceased, the trial court found that with one exception, Mother did not seek to communicate with J.S.K. and J.E.K. throughout the life of the case, such as by sending cards, gifts, or letters.

Opinion of the Court

Although Mother disputes a number of the trial court's findings regarding her failure to make adequate progress towards rectifying the substance abuse and unstable housing and employment issues she experience leading up to the adjudication of J.S.K. and J.E.K. as neglected juveniles, she does not meaningfully dispute the trial court's findings that she has provided almost no financial support of J.S.K. and J.E.K., and no voluntary financial support of J.S.K. and J.E.K., nor does she meaningfully dispute the prior adjudications of neglect of J.S.K. or J.E.K. or of their two siblings since the prior adjudications of neglect of J.S.K. and J.E.K. Mother also fails to identify any discrepancy between the trial court's findings regarding her visitation of J.S.K. and J.E.K. and communication or attempts to communicate with J.S.K. and J.E.K. after reunification efforts ceased and she lost visitation privileges.

In Findings of Fact 35 through 37 and 41 through 42 the trial court specifically found as follows:

35. Respondent Moser demonstrated a pattern of failing to provide appropriate care for the juveniles and the Court finds that it is probable that this neglect would be repeated if custody of the juveniles was returned to Respondent Moser.

36. Respondent Moser has not improved the situation that led to the placement of the juveniles and based on the evidence presented on this date, the juveniles would be subjected to irreparable harm if the juveniles would be returned to Respondent Mother.

37. Respondent Moser is incapable of providing for the proper care and supervision and there is reasonable

Opinion of the Court

probability that the parent's incapability will continued for the foreseeable future. . . . Respondent Moser's substance abuse, mental health, lack of parenting skills, no stable housing or income, and the extended period of time that this matter has been in court [resulted in the adjudications.] Respondent Moser has never come up with an appropriate alternative child care arrangement. Although she has requested home studies for different relatives, and family friends, only a paternal great-aunt located out of state was approved, however she withdrew due to a reported health issue. Acquiescence to the plan that the court has [put] into place while CCDHS has custody does not count as an appropriate child care arrangement.

. . .

41. Respondent Moser has demonstrated a pattern of failing to provide appropriate care for the juveniles. It is highly probable that neglect would be repeated if custody of the juveniles was returned to Respondent Moser. Respondent Moser has neglected the welfare of the juveniles for several years. This behavior is likely to continue into the foreseeable future.

42. Respondent Moser has foregone all her parental responsibilities and relinquished her parental claims to CCDHS. She has willfully neglected and refused to perform natural and legal parental obligation of care and support. She has withheld her love and care and opportunity to display affection to her children. . . .

We hold that the trial court's findings supporting its adjudication that J.S.K. and J.E.K. are neglected juveniles were supported by clear, cogent, and convincing evidence.

The evidence presented at the hearing on adjudication additionally

Opinion of the Court

demonstrated that there was also an absence of evidence of changed conditions and a corresponding high probability of future neglect in light of the history of neglect. *See In re Shermer*, 156 N.C. App. at 286-87, 576 S.E.2d at 407. As one case worker with the Department assigned to the case testified, J.S.K. and J.E.K. were adjudicated neglected on 11 June 2015; none of Mother's children were currently in her custody at the time of the hearing; all of Mother's children had been involved with the Department in some fashion; a younger brother of J.S.K. was brought into custody five days after Mother gave birth to him in late June 2015 because he tested positive for cocaine at birth; an older sister of J.S.K and J.E.K. came into the custody of the Department after an episode of domestic violence involving Mother and Mother's mother in November 2015; and both of these siblings had also been adjudicated neglected after coming into the Department's custody. Mother stipulated that a child support obligation for J.S.K. and J.E.K. had been established in September 2016; that the only payments towards this support obligation were an employer withholding in 2017 and an involuntary payment in 2018 made from an intercepted tax return refund; and that there was an outstanding arrearage owing in 2018 at the time of the hearing.

The trial court's findings regarding the lack of evidence of changed conditions in light of the history of neglect and the probability of repeated neglect were also supported by clear, cogent, and convincing evidence. There was case worker

Opinion of the Court

testimony that before reunification efforts had ceased because of Mother discontinuing visitation, concerns surfaced because Mother would engage in problematic behavior during visitation, such as pinching J.S.K. or J.E.K. when the child pinched her, telling J.S.K. and J.E.K. not to cry during visitation or she would not visit them, and spending excessive time on her phone during visits. Although after visitation was ceased, Mother was still allowed to attend the children's medical appointments, there was testimony that she did not ever avail herself of this opportunity.

IV. Conclusion

We affirm the trial court's order terminating Mother's rights to J.S.K. and J.E.K. because clear, cogent, and convincing evidence supported the trial court's findings that the juveniles were neglected.

AFFIRMED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).