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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-119

Filed: 5 November 2019

Mecklenburg County, No. 17JT325

IN THE MATTER OF: M.V.

Appeal by respondent-parents from order entered 19 September 2018 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 18 September 2019.

Keith S. Smith for petitioner-appellee Mecklenburg County YFS.

Office of the Parent Defender, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellant father.

Vitrano Law Offices, PLLC, by Sean Paul Vitrano, for respondent-appellant mother.

Wyrick Robbins Yates & Ponton LLP, by Sean Samuel Planchard, for guardian ad litem.

BERGER, Judge.

Respondent-Mother and Respondent-Father (collectively, “Respondents”) appeal from an order terminating their parental rights to M.V. (“Michael”).¹ On

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading. Michael’s juvenile siblings are referred to by the pseudonyms “Marcia” and “Mabel.”

appeal, Respondents contend the trial court erred when it terminated their parental rights. Additionally, Respondent-Mother argues the trial court abused its discretion when it concluded that termination of her parental rights was in Michael's best interests. We disagree.

Factual and Procedural Background

Michael was born to Respondents on July 6, 2017. Based on the neglect of prior children by Respondents, the Mecklenburg County Department of Social Services ("DSS") petitioned the trial court to enter a non-secure custody order two days after Michael was born. That same day, the trial court entered a custody order placing Michael in the care of DSS, citing a substantial risk of physical injury as the primary concern. Michael is now over two years old and has been in the custody of DSS and in foster care since he was two days old.

DSS first became involved with Respondents on June 14, 2015, after Respondent-Mother went to a hospital as a result of domestic violence. According to Respondent-Mother, Respondent-Father had abused her for over three years. On July 5, 2015, another domestic violence incident occurred when Respondent-Father again assaulted Respondent-Mother. This incident took place in the presence of Respondents' two-year-old daughter, Marcia, and seven-month-old daughter, Mabel.

In October 2015, Respondent-Father's physical abuse again resulted in Respondent-Mother seeking medical treatment. Upon admission to the hospital,

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Respondent-Mother told her social worker that she was injured when Respondent-Father assaulted her. On December 10, 2015, Respondent-Mother had a black eye while meeting with her social worker. During this meeting, she admitted that there had been at least three domestic violence incidents within the prior month. Based on Respondent-Mother's statements, DSS contacted law enforcement. Although Respondent-Mother admitted to law enforcement that Respondent-Father punched her in the eye with a closed fist on December 5, 2015, she did not want to pursue criminal charges. That same day, DSS obtained custody of Marcia and Mabel.

On February 2, 2016, a child support order was entered which required Respondents to pay support for Marcia and Mabel. On March 15, 2016, Marcia and Mabel were adjudicated neglected and dependent. The trial court ordered Respondents to address several issues, including domestic violence, substance abuse, inappropriate parenting, unstable employment, and unstable housing. Respondent-Mother was also required to address issues relating to her mental health. As of May 23, 2016, both Respondent-Father and Respondent-Mother had made progress on their case plans. At a permanency planning hearing, the court commended Respondents on their progress but also reminded them of the need for honesty and transparency with the court. The trial court was primarily concerned that Respondents were continuing their relationship, contrary to their case plans. At the hearing, Respondents both testified that they were no longer in a relationship.

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In August 2016, DSS discovered that Respondents were living together and concealing this information. Although DSS required Respondent-Father and Respondent-Mother to stay away from each other, Respondents continued their relationship. At a review hearing on September 6, 2016, the trial court found that Respondents had been living together and had not been forthcoming about their relationship or living arrangements. They were ordered to comply with the domestic violence, employment, and housing aspects of their case plans, which required Respondents to live separately. Despite the court's order, Michael was conceived in the fall of 2016. Following Michael's birth in July 2017, Respondent-Mother initially attempted to conceal Respondent-Father's paternity of the child.

Respondent-Father and Respondent-Mother were frequently seen together in the community. According to Respondent-Mother, they were no longer engaged in a relationship but were "co-parenting" together, despite having no children in their custody at the time.

Although Respondent-Father completed a twenty-six week domestic violence course in December 2016, he refused to acknowledge his physical abuse of Respondent-Mother that served as the catalyst of Marcia and Mabel's removal from Respondents' home. Respondent-Father was referred to mental health counseling services for his failure to acknowledge his physical violence but never informed his mental health counselors of the domestic violence concerns. Moreover, he views

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Respondent-Mother's reports of his abuse as a "malicious thing." Respondent-Father acknowledges a long history of domestic violence between his own parents but considers their domestic altercations to be simple "fallout."

Respondent-Mother participated in domestic violence and mental health services and programs; however, she frequently did not attend, and she failed to demonstrate genuine progress unless actively living in a women's shelter. While living in a shelter, Respondent-Mother finished a five-week domestic violence program in early 2016 but failed to continue domestic violence counseling upon her discharge. She scheduled appointments with Mecklenburg Community Support Services for counseling service assessments on June 22, 2016 and August 12, 2016 but failed to attend either appointment. Respondent-Mother initiated counseling sessions to address her major depressive disorder but only attended six sessions over the course of three months and failed to maintain contact with her counselor after March 24, 2017.

Additionally, Respondent-Mother often minimized or denied making statements about Respondent-Father victimizing her before the trial court while simultaneously admitting multiple domestic violence encounters to her various counselors. Deniese McCain, a counselor with Mecklenburg County Community Support Services, testified that Respondent-Mother was "minimally" grasping the information she was provided about domestic violence. Ms. McCain also determined

that Respondent-Mother had “normalized the domestic violence based on her own witnessing of it” as a child.

On March 29, 2017, the trial court ordered DSS to initiate a termination of parental rights proceeding during a review hearing. In June 2017, Respondent-Mother was living at a different women’s shelter when Michael was born. At the time, there was still “significant evidence” that Respondents were involved in a relationship. On November 3, 2017, Respondents’ parental rights to Marcia and Mabel were terminated.

On July 8, 2017, Michael was taken into DSS custody. On September 6, 2017, Michael was adjudicated neglected and dependent. In the order, the trial court noted its lack of trust in Respondents because “they have been deceitful with the [court] in the older siblings’ cases.” The court also found that “[Respondent-Mother] has suffered injuries at the hands of [Respondent-Father]” and that “[t]he issue of domestic violence has not been alleviated or addressed.” Respondents were required by the court to address the same issues that had persisted in the cases of Marcia and Mabel.

At a review hearing on January 11, 2018, the trial court acknowledged that there were no recent reports of domestic violence between Respondent-Father and Respondent-Mother but also found that “[Respondents] have been caught in lie after lie to the [court and DSS].” The court further found that “[u]ntil [Respondents]

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acknowledge the existence of domestic violence, the issue cannot be addressed or fixed.” At the same hearing, Respondents admitted to maintaining regular contact.

At a review hearing on February 7, 2018, the trial court found that Respondent-Father continued to deny having committed any acts of domestic violence against Respondent-Mother. The court also found that Respondent-Mother had not demonstrated “any willingness to hold [Respondent-Father] accountable or that she [could] create a home that will be free from violence.” Further, the trial court found that Respondents maintained regular contact and were dishonest with the court and DSS regarding their relationship.

Both Respondent-Father and Respondent-Mother attended regularly scheduled visits with Michael, were appropriate during visits, and brought Michael several gifts during visits. Respondents have also maintained employment throughout Michael’s case and have both maintained independent housing. However, although DSS expended approximately \$21,000.00 while Michael was in foster care, neither Respondent-Father nor Respondent-Mother paid any child support for Michael at any point in time.

On April 5, 2018, DSS filed a motion to terminate Respondents’ parental rights alleging neglect, willful failure to contribute to Michael’s care, and prior termination of parental rights with inability or unwillingness to establish a safe home. The primary concern of DSS remained Respondents’ continued contact, Respondent-

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Father's failure to acknowledge his past acts of physical violence, and Respondent-Mother's failure to engage consistently in domestic violence and mental health services.

Respondents' parental rights to Michael were terminated by the trial court on September 19, 2018. In its written order, the court found the existence of grounds under Sections 7B-1111(a)(1), (a)(3), and (a)(9) of the North Carolina General Statutes.

Respondents appeal arguing the trial court erred when it terminated their parental rights. Additionally, Respondent-Mother argues the trial court abused its discretion when it concluded that termination of her parental rights was in Michael's best interests.

Standard of Review

In the adjudicatory stage of a termination of parental rights proceeding, the trial court must determine whether grounds for termination of parental rights exist under Section 7B-1111(a). *In re D.H.*, 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014). Our standard of review at the adjudicatory stage is whether the trial court's findings of fact are supported by clear and convincing evidence, and whether the findings support the court's conclusions of law. *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015). "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 (2009) (citation and quotation marks omitted).

If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where the court must determine whether termination of parental rights is in the best interests of the child. *In re D.H.*, 232 N.C. App. at 219, 753 S.E.2d at 734. Our standard of review at the disposition stage is whether the trial court abused its discretion. *In re A.B.*, 239 N.C. App. at 161, 768 S.E.2d at 575-76. “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

Analysis

On appeal, Respondents contend the trial court erred in concluding grounds existed for terminating their parental rights to Michael for neglect under Section 7B-1111(a)(1), willful nonpayment of a reasonable portion of the cost of Michael’s care under Section 7B-1111(a)(3), and inability and unwillingness to establish a safe home under Section 7B-1111(a)(9). Respondent-Mother further contends the trial court abused its discretion by determining termination of her parental rights was in Michael’s best interests. We disagree.

I. Termination pursuant to Section 7B-1111(a)(1)

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Respondents argue the trial court erred when it terminated their parental rights for neglect. The court may terminate parental rights upon finding that the parent has neglected the juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2017). A juvenile is deemed neglected when their parent lives in an environment injurious to the juvenile's wellbeing. N.C. Gen. Stat. § 7B-101(15) (2017). Furthermore, in determining that a juvenile has been neglected, it is relevant that the juvenile lives in a home where another juvenile has been subjected to neglect by an adult who regularly lives in the home. N.C. Gen. Stat. § 7B-101(15).

“Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016). In determining the likelihood of future neglect by the parent, the trial 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). “Termination of parental rights for neglect may not be based solely on past conditions which no longer exist.” *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 614 (1997).

Because Michael has effectively been separated from Respondents since birth, the trial court was required to find by clear and convincing evidence that (1) there

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was past neglect of a child by Respondents; and (2) Michael was likely to be subjected to future neglect by Respondents. *In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 167. The past neglect prong is satisfied by the trial court's finding that Marcia and Mabel were adjudicated neglected and dependent on March 15, 2016. On appeal, Respondents contend that the trial court's findings relating to a likelihood of future neglect were not supported by clear and convincing evidence. Respondent-Father additionally argues that the trial court's factual findings do not comport with "fundamental fairness" because they effectively required Respondent-Father to incriminate himself or risk termination of his parental rights.

Respondents argue that the trial court's findings relating to domestic violence cannot be based on clear and convincing evidence because they presented evidence that there were no reported incidents of domestic violence between Respondents since December 2015. However, this argument effectively misstates the applicable standard of review. "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. at 531, 679 S.E.2d at 909 (citation and quotation marks omitted) (emphasis added).

The court acknowledged the absence of reported domestic violence in its findings. The court also acknowledged Respondents' persistent dishonesty with the court, Respondent-Father's failure to acknowledge his role in physical domestic

violence, and Respondent-Mother's repeated attempts to minimize or deny her victimization. The trial court, as the ultimate factfinder, was entitled to assign little weight to the lack of reported domestic violence while simultaneously assigning considerable weight to evidence that tended to demonstrate Respondents' failure to address domestic violence issues.

A. Respondent-Father

Respondent-Father argues the trial court erred because its findings relating to a likelihood of future neglect were not supported by clear and convincing evidence. Respondent-Father additionally contends that the trial court's factual findings do not comport with "fundamental fairness" because they effectively required Respondent-Father to incriminate himself or risk termination of his parental rights.

As part of Respondent-Father's case plan for Michael, he was required to address family relationships and domestic violence. The trial court found that Respondent-Father completed a twenty-six week domestic violence course but failed to ever acknowledge or accept responsibility for his physical violence towards Respondent-Mother. According to the program coordinator of the twenty-six week course, during the sessions "[h]e never acknowledged physical abuse at all." Respondent-Father was also referred to mental health counseling services for his failure to acknowledge his physical violence but never informed his counselors of the domestic violence concerns. Respondent-Father has also referred to Respondent-

Mother's reports of his abuse as a "malicious thing" and views his own parents' domestic violence as simple "fallout."

Furthermore, Respondent-Father's argument that the trial court's factual findings did not comport with "fundamental fairness" is without merit. Respondent-Father never invoked or attempted to invoke his Fifth Amendment right against self-incrimination. Instead, he voluntarily testified on numerous occasions regarding his involvement in domestic violence. On each of these occasions, he failed to accept responsibility or acknowledge wrongdoing for domestic violence despite significant evidence to the contrary.

Therefore, the trial court's factual findings that (1) Respondent-Father has "failed to address [his] domestic violence issues," and (2) that "[t]here is a high probability of the repetition of neglect if [Michael] were placed in the custody" of Respondent-Father, are supported by clear and convincing evidence. Based on the undisputed finding of past neglect and the clear and convincing evidence supporting the finding that Michael would likely be subject to future neglect in the care of Respondent-Father, the trial court did not err in concluding grounds existed to terminate his parental rights under Section 7B-1111(a)(1).

B. Respondent-Mother

Respondent-Mother argues the trial court erred because its findings relating to a likelihood of future neglect were not supported by clear and convincing evidence.

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Respondent-Mother's case plan required her to address family relationships and domestic violence issues, and that she participate in mental health services. Pursuant to her case plan, Respondent-Mother was tasked with demonstrating her knowledge about domestic violence and ensuring her own safety. Respondent-Mother was also ordered to be open and honest about her relationship with Respondent-Father.

Although Respondent-Mother participated in the required services and programs, she failed to attend consistently or demonstrate genuine progress. While living in a local women's shelter, Respondent-Mother finished a five-week domestic violence program in early 2016 but failed to continue domestic violence counseling upon her discharge. She scheduled appointments with Mecklenburg Community Support Services for counseling service assessments on June 22, 2016 and August 12, 2016 but failed to attend either appointment. Respondent-Mother initiated counseling sessions to address her mental health issues, but only attended six sessions over the course of three months, and then failed to maintain contact with her counselor. Additionally, Respondent-Mother often minimized or denied making statements about Respondent-Father victimizing her before the trial court. One of Respondent-Mother's counselors, Ms. McCain, described Respondent-Mother as "minimally" grasping the information she was provided about domestic violence. Ms.

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McCain also determined that Respondent-Mother had “normalized the domestic violence based on her own witnessing of it” as a child.

Prior to Michael’s birth, Respondent-Mother was living with Respondent-Father while concealing that information from DSS and the Court. Although Respondents’ case plans required that they maintain distance, Respondents continued their relationship. At a review hearing on September 6, 2016, the trial court found that Respondents had been living together and had not been honest about their relationship or living arrangements. They were ordered to comply with the domestic violence, employment, and housing aspects of their case plans. Despite the court’s order, Michael was conceived in the fall of 2016. Following Michael’s birth in July 2017, Respondent-Mother initially attempted to conceal that Respondent-Father’s paternity of the child. Throughout the proceedings, Respondent-Mother acknowledged that she maintained contact with Respondent-Father two to three times a week despite repeated orders from the court that Respondents remain separated pursuant to their case plans.

Accordingly, the trial court’s findings that (1) Respondent-Mother has failed to develop the skills necessary “to recognize risks and patterns of abuse or to extricate herself from situations in which she or any children in her care are exposed to a risk of domestic violence,” and (2) that “[t]here is a high probability of the repetition of neglect if [Michael] were placed in the custody” of Respondent-Mother, are supported

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by clear and convincing evidence. Based on the undisputed finding of past neglect and the clear and convincing evidence supporting the finding that Michael would likely be subject to future neglect in the care of Respondent-Mother, the trial court did not err in concluding grounds existed to terminate her parental rights under Section 7B-1111(a)(1).

We affirm the trial court's termination of parental rights pursuant to Section 7B-1111(a)(1). Because grounds existed for terminating Respondents' parental rights to Michael pursuant to Section 7B-1111(a)(1), we need not address their arguments against termination under Sections 7B-1111(a)(3) and (a)(9). *In re Davis*, 116 N.C. App. 409, 413, 448 S.E.2d 303, 305 (1994).

II. Best interests determination

Respondent-Mother also argues that the trial court abused its discretion by concluding that termination of her parental rights was in Michael's best interests. Once a trial court has concluded that grounds exist for termination of parental rights, it must then decide whether termination is in the best interests of the child. *In re D.R.F.*, 204 N.C. App. 138, 141, 693 S.E.2d 235, 238 (2010). The trial court must consider and make findings concerning the following criteria, if relevant, in making its best interests determination:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.

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- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2017). Importantly, the trial court need only make written findings on those factors that are relevant to the facts of the case. *In re D.H.*, 232 N.C. App. at 221, 753 S.E.2d at 735.

In its order terminating parental rights, the trial court found that Michael has been in the care of his foster parents since he was two days old. The court also found that Michael's foster parents meet all of Michael's needs and he goes to them for comfort and support. Moreover, the court found it "highly probable" that Michael would be adopted by his foster parents once he was cleared for adoption. While Michael recognizes Respondent-Mother, their "bond is not in the nature of a parent-child bond" because Michael's contact with Respondent-Mother has been limited to weekly visits since birth.

The trial court properly considered those relevant criteria under Section 7B-1110(a), and its findings are consistent with the evidence. The trial court did not abuse its discretion when it determined that termination of Respondent-Mother's parental rights was in Michael's best interests.

Conclusion

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For the reasons stated herein, we affirm the trial court's order terminating Respondent-Father and Respondent-Mother's parental rights to Michael.

AFFIRMED.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).