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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-942

Filed 05 July 2023

Person County, Nos. 17-JT-74, 17-JT-75

IN THE MATTER OF

K.S. & J.S.

Appeal by Respondent Mother from Order entered 29 July 2022 by Judge Benjamin S. Hunter in Person County District Court. Heard in the Court of Appeals 6 June 2023.

Tom Fitzgerald for Petitioner-Appellee Person County Department of Health and Human Services no brief filed.

Edward Eldred for Respondent-Appellant Mother.

Matthew D. Wunsche for Guardian Ad Litem.

RIGGS, Judge.

Appellant-Mother (“Mother”) appeals from the trial court’s order terminating her parental rights to her minor children, K.S. and J.S. The trial court’s termination order entered on 29 July 2022 was decided on grounds of neglect and willful failure to make reasonable progress toward reunification. Mother argues the trial court did

not make sufficient supported findings of fact to terminate Mother's parental rights. Additionally, Mother argues that five findings of fact were not supported by clear, cogent, and convincing evidence. After careful review of the record, we hold that the trial court's contested findings of fact were supported by clear, cogent and convincing evidence, and that those findings support its conclusions of law that grounds existed for terminating Mother's parental rights to K.S. and J.S. Therefore, we affirm the trial court's order terminating parental rights.

I. FACTS AND PROCEDURAL HISTORY

Mother has four minor children, only two of whom are the subject of this matter: K.S., (born in December 2015), and J.S., (born in December 2016)¹. Mother and the children's biological father ("Father") never married and have a history of domestic violence. Father was ordered to submit to DNA testing, was properly served with a petition for termination of his parental rights, failed to respond, and was not present at the termination hearing.

Mother has a history with Children's Protective Services ("CPS") dating back to 4 May 2016 for allegations involving neglect. On 11 December 2017, Person County Department of Social Services ("DSS") received a CPS complaint regarding the death of Mother's infant niece. At that time, Mother and the children resided in a home with multiple family members. Although the infant's death did not involve Mother,

¹ Mother's two minor children, collectively, will be referred to as "the children."

DSS found the home to be in poor living condition. As a result, on 22 January 2018, DSS obtained a non-secure custody order and provided in-home services to assist Mother with locating suitable housing. Despite the family relocating to more suitable housing, DSS removed the children on 30 August 2018, due to continued concerns regarding the children's safety and Mother's inability to protect them from domestic violence. DSS's concerns involved domestic violence with Father as the perpetrator, and lack of cleanliness of the new home. On 7 May 2018, the children were adjudicated as neglected, and this order was entered on 16 July 2018.

On 30 October 2020, DSS filed a petition for termination of Mother's parental rights on grounds of neglect and failure to make reasonable progress for reunification, or correcting the conditions which brought the children into foster care. From 1 November 2021 to 2 June 2022, the trial court held several adjudication hearings and heard evidence regarding DSS's petition for termination of Mother's parental rights. The DSS foster care worker provided testimony, as well as Mother, and the psychiatrist ("Doctor") appointed by DSS to evaluate Mother.

On 1 November 2021, the DSS worker testified that DSS made reasonable efforts to preserve the family unit before removing the children in 2018, with in-home services to address domestic violence, life skills, parenting classes, and locating suitable housing. From 29 July 2019 until 10 November 2019, the children were reunited with Mother in a trial placement. The DSS worker testified that the judge approved the trial placement because the children were having behavioral issues in

their foster care placements. Both children had “unmanageable behavior” during their time in DSS’ custody, and these behaviors continued until the time of the termination hearing. During the trial placement with Mother, the trial court ordered supervised visits for Father by DSS. Mother later disclosed to the DSS worker that Father came to her home, with the children in the house and without any approved DSS supervision, and assaulted her by choking her in front of the children. Further, the DSS worker testified that domestic violence places the children in danger, and this unresolved safety concern was the primary reason DSS removed the children from Mother’s care in 2018.

The DSS worker testified that since the temporary placement with Mother in 2019, the children have been communicating with her over the phone, virtually, and in-person. Mother’s visits with the children were described to be often chaotic, and the children’s behaviors would “worsen” after visits with her. The children became “more physically aggressive” after visits. J.S. regressed to more immature behavior after visits, and K.S. would, at times, lay on the floor, throw tantrums, and refuse to go to the visit.

The DSS worker also testified that the COVID pandemic required in-person visits be replaced with virtual visits. However, in June of 2020, the children’s therapist recommended that DSS only let the children communicate with Mother via telephone, because virtual visits seemed to be “stressful” for the children. During phone calls with the children, Mother would sometimes not talk on the phone at all,

and the children would not want to get on the call. Once, in August 2021, Mother's boyfriend, in violation of the supervision order, got on the telephone instead of Mother which upset the foster parents and J.S. The DSS worker also testified that Mother has declined to follow any medication-based treatment recommendations from her doctor, made to address her mental health challenges. Mother did, however, complete a parenting course in 2022 after not completing a prior parenting program that she was provided in 2019.

The DSS foster care worker also testified that since 2018, Mother has not consistently been employed and has not remained employed more than three to five months at a time. Since 2017, Mother has been attending school but did not complete her GED until 2019. At the time of the termination hearing, Mother lived with a boyfriend who was the only person employed in her household. In 2020, DSS appointed Doctor to evaluate Mother to assess what her "[parenting] skills are and how to better [assist] her." The DSS worker testified that she was only aware of one recommendation Doctor made for Mother at that time, which was to continue mental health treatment.

On 13 and 28 January 2022, Doctor testified that she observed interactions with Mother and the children on 25 February 2020, which was three months after the children were removed from Mother's care the second time. Doctor observed Mother and both children together, despite the children typically having to visit with Mother separately due to their behavioral issues. Doctor observed Mother being

unable to handle both children, and described the visit as a “pretty chaotic hour.” As of January of 2020, the children have been separated from each other for their safety. K.S. has continuously shown signs of aggression and has been diagnosed with post-traumatic stress disorder, ADHD, and adjustment disorder. J.S., the younger child, has begun to also exhibit these problematic behaviors. During her testimony, Doctor stated she believed Mother had made “little progress” and was not capable of parenting the children. Furthermore, Mother quit her parenting education course by April of 2020.

Finally, Doctor and the DSS worker both testified that Mother has been inconsistent with her mental health treatment, after being told on multiple occasions after psychological evaluations that she should seek treatment for depression. On 29 July 2022, the trial court entered the order terminating Mother’s parental rights to the children, and Mother timely appealed.

II. ANALYSIS

A. Standard of Review

This Court reviews a trial court’s orders for termination of parental rights to determine if the “findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984) (quoting N.C. Gen. Stat. § 7B-1111(a)). In termination of parental rights cases, a trial court’s conclusions of law are reviewed *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008).

The trial court's findings of fact are conclusive on appeal when supported by competent evidence, even if that evidence could sustain contrary findings. *In re L.T.R.*, 181 N.C. App. 376, 381, 639 S.E.2d 122, 125 (2007) (internal quotations and citations omitted). Unchallenged findings of fact are "deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019).

B. Challenged Findings of Fact

On appeal, Mother challenges the trial court's findings of fact that established grounds existed to terminate her parental rights under North Carolina General Statutes § 7B-1111(a)(1) and (6). Mother asserts that the Findings of Fact 31, 37, 40, 55, and 57 are not supported by clear, cogent and convincing evidence. We disagree.

1. Finding of Fact 31

Finding of Fact 31 states that "[M]other has not successfully utilized the services offered by DSS." Here, the trial court's findings demonstrate "clear, cogent and convincing evidence . . . support [its] conclusions of law," that Mother failed to successfully utilize DSS services. *In re Clark*, 72 N.C. App. at 124, 323 S.E.2d at 758 (1984) (quoting N.C. Gen. Stat. § 7B-1111(a)). On the record before us, Mother has utilized *some* of the services offered by DSS, but we cannot find that the trial court erred in concluding that she did not use those services *successfully*. Mother completed domestic violence classes and separated from Father. Mother also has completed some parenting classes; she allowed the psychological evaluations, and she did go to

recommended therapy for a time. However, these attempts at utilizing some DSS services is not necessarily an indication that she has successfully utilized those services or made significant progress toward satisfying the prerequisites for reunification. Mother has also been inconsistent with her mental health treatment.

By 2021, she was not “engaged in individual or group therapy or taking recommended medication.” Mother has also not been able to properly utilize or demonstrate her parental training. The trial court stated that “there was no indication that she is using the material learned during her calls with the boys.” This is supported by ample testimony by DSS and Doctor about the chaotic nature of her visits with the children. Thus, this Court cannot disturb Finding of Fact 31.

2. Finding of Fact 37

Finding of Fact 37 states that “Mother has trouble disciplining her [children] and providing structure during their time together; the boys appear to have no respect for their mother and would often challenge her.” Mother argues that because she has not seen the children in person in two years that this is a “wild exaggeration.” However, the testimony of those who observed her last in-person visit before COVID did provide evidence that Mother had difficulty disciplining her children and providing structure. Beyond this, reports in the record support a conclusion that the same pattern persisted in the children and Mother’s video and phone call visits. Mother would, at times, not speak to the children at all when on the phone. The children experienced stress from their video calls with Mother so much so that their

therapist recommended just having phone calls. This Court thus cannot disturb Finding of Fact 37.

3. *Finding of Fact 40*

Finding of Fact 40 states that “[M]other is significantly in arrears on her child support obligation and is not presently employed.” There is evidence in the record that this is indeed the case. DSS testified that Mother was subject to a child support order. DSS submitted a court report on 17 May 2021 that stated that Mother was ordered to pay monthly child support of \$376 which she ceased paying in March 2021. The trial court found that the parties stipulated that the court report could be used to support the November 2021 permanency planning order. Therefore, although there was no added evidence of a lack of child support payments at the termination hearing, there is evidence enough from this stipulation to support the trial court’s finding of fact that Mother was behind in her payments.

4. *Finding of Fact 55*

Finding of Fact 55 states that “[M]other declined any additional DSS services to assist in reunification as late as June 1, 2020.” Although the precise services the trial court considered to be “additional” is difficult to discern from the record, Finding of Fact 31, discussed above, essentially encompasses all services that DSS has recommended and provided, and explicitly denoted which services that Mother has declined or not successfully utilized. As this Court has already found that there is sufficient evidence to support Finding of Fact 31 that Mother has not successfully

utilized DSS services, this finding is also supported by “clear, cogent and convincing evidence.” *Id.*

5. Finding of Fact 57

Finding of Fact 57 states that “[M]other has not consistently taken steps to gain employment or to remain employed, which would show her ability to provide for her children.” Mother’s history with employment is inconsistent. Although there were times Mother was seeking employment or employed, there were also times where Mother was doing neither. Mother rarely was able to keep a job for more than three to five months. And although Mother did demonstrate some efforts to remain employed or gain education, Mother is currently unemployed and relies entirely on her boyfriend for financial support for herself and the children. Lastly, notwithstanding Mother’s contention that her boyfriend would provide for the children, this finding is centered on *Mother’s* consistent efforts to remain employed, and this Court will not disturb it.

C. Termination Grounds for Neglect

Article 11 of Chapter 7B (Juvenile Code) of the North Carolina General Statutes governs termination of parental rights proceedings. N.C. Gen. Stat. §§ 7B-1100-1111 (2021). Section 7B-1111 sets forth the requirements trial courts must follow when a petition for termination of parental rights has been filed. N.C. Gen. Stat. § 7B-1111. The trial court may terminate parental rights for neglect “if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-

101.” N.C. Gen. Stat. § 7B-1111(a)(1). A neglected juvenile is “[a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline . . . [or] . . . [h]as not provided or arranged for the provision of necessary medical or remedial care . . . [or] . . . [c]reates or allows to be created a living environment that is injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15) (2021).

When termination of parental rights is based upon evidence of neglect, Subsection 7B-101(15) “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).

“Evidence 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.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232, (1984). “The 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.” *Id.* (citation omitted). “[I]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child at the time of the termination proceeding.” *In re M.A.*, 374 N.C. at 869, 844 S.E.2d at 920.

As discussed earlier, competent evidence demonstrates (1) Mother neglected the children and (2) that Mother's actions place the children at risk for "future neglect." *Id.* at 840, 844 S.E.2d at 921. The DSS worker and Doctor both testified that Mother made little progress in her reunification plan and failed to complete multiple necessary steps to attaining reunification. Mother argues that "the supported findings do not show a risk of domestic violence, or an unclean or unsafe home, or a mental health issue which would likely contribute to neglect, all of which have been found to be risk indicators of future neglect." We disagree.

The trial court's findings establish Mother has repeatedly refused to follow the medication recommendations from her psychiatrist to treat her continuing depression and has been inconsistent with her therapy treatment plan. Mother, in 2019, put both children willfully into an unsafe environment where they witnessed domestic violence between Mother and Father. Beyond this, the children show worsening aggressive behaviors after every visit with Mother because Mother is unable to control and parent the children properly. The trial court thus found that this creates an unsafe environment for both children.

Although Mother, since the 2019 temporary placement, has not had any more domestic violence incidents and has consistently maintained suitable housing, the trial court was not limited to consideration of just the domestic violence and home cleanliness issues. Per the trial court's supported findings, Mother has consistently shown an inability to provide proper "supervision, or discipline" for the children. N.C.

Gen. Stat. § 7B-101(15). Further, she has not utilized her resources given to her by DSS and thus not made significant progress with her reunification plan. As addressed in the section below, this can also be considered an indication of future neglect.

D. Willful Failure to Make Reasonable Progress

When parents fail to make progress in completion of a services agreement or case plan, this “is indicative of a likelihood of future neglect.” *In re M.A.*, 374 N.C. at 870, 844 S.E.2d at 921. Parental rights may be terminated by a trial court if the court determines that a parent willfully failed to make reasonable progress toward correcting the problems that led to DSS removing the children from the parent’s custody. N.C.G.S § 7B-1111(a)(2). This Court has defined reasonable progress in a prior case that is instructive here. *In re Fletcher*, 148 N.C. App. 228, 235-36, 558 S.E.2d 498, 502 (2002).

In *Fletcher*, “the respondent mother made some efforts” to comply with her case plan, but her child was in foster care for two years. This Court upheld an order for termination of the mother’s parental rights after determining the evidence supported the trial court’s findings that sufficient progress was not made. *Id.* The respondent mother in *Fletcher* was required to undergo psychological evaluations, attend visitations with her child, and complete parenting classes. *Id.* at 230, 558 S.E.2d at 499. Although the mother had completed parenting classes and attended visitations with her child, she had not followed the recommendations from the psychiatric

evaluation. *Id.* The evaluator also testified that the mother had not made any progress in treatment and that continued visits with her child could be detrimental. *Id.* at 231–34, 558 S.E.2d at 500–02.

Likewise, here, Mother has demonstrated a lack of reasonable progress on several fronts. By the time of the termination hearing, Mother had been separated from the children for approximately four years, and still had not completed all the requirements to be reunified with the children. This alone “is indicative of a likelihood of future neglect” of the children in Mother’s care. *In re M.A.*, 374 N.C. at 870, 844 S.E.2d at 921.

Indeed, both Doctor and DSS provided testimony that Mother had been inconsistent with her mental health treatment, although she was informed on multiple occasions at the conclusion of each psychiatric evaluation that she needed to continue mental health treatment to address her depression. Specifically, Mother refused to comply with the recommendations for medication management and supplemental therapy, since the beginning of the DSS’s interactions with her in 2017.

Like the mother in *Fletcher*, Mother’s visits with the children were detrimental to their welfare. Both children displayed disruptive behaviors such as laying on the floor and “more physically aggressive” after visiting with the Mother, to the point their therapist recommended telephone visits only, because virtual visits were “stressful” for them. Doctor also testified that Mother made “little progress” and opined Mother was not capable of parenting the children. And although Mother

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eventually completed a parenting course in 2022, completion did not occur until three years later after it was provided in 2019. Thus, the trial court's determination that Mother willfully failed to make reasonable progress is supported by competent evidence. *In re L.T.R.*, 181 N.C. App. at 381, 639 S.E.2d at 125. (internal quotations and citations omitted).

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's 2022 Order Terminating Parental Rights.

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).