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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-966

Filed 05 September 2023

Durham County, Nos. 17JT143 and 17JT144

IN THE MATTER OF: I.M. & I.M.

Appeal by respondent-mother from orders entered 12 August 2022 by Judge Shamieka L. Rhinehart in Durham County District Court. Heard in the Court of Appeals 21 August 2023.

Lauren Vaughan for petitioner-appellee Durham County Department of Social Services.

New South Law Firm by Valerie L. Bateman for guardian ad litem.

Kimberly Connor Benton for respondent-appellant mother.

FLOOD, Judge.

Respondent-Mother appeals the trial court's orders terminating her parental rights to twins I.M. ("Ike") and I.M. ("Ivy").[1] After careful review, we affirm.

I. Factual and Procedural Background

[1] Pseudonyms are used to protect the juveniles' identity and for ease of reading.

Respondent-Mother's involvement with the Durham County Department of Social Services ("DSS") began in 2005, shortly after the birth of her first child. Between 2007 and 2014, Respondent-Mother had five more children, and DSS filed juvenile petitions alleging neglect and dependency for all six children. The children had been in the legal custody of DSS since they were adjudicated neglected juveniles in 2014, though they alternated throughout the life of the case between residing with Respondent-Mother and in foster care. The six oldest children were removed from Respondent-Mother's care for the final time in September 2016.

On 5 July 2017, Respondent-Mother gave birth to twins, Ike and Ivy. On 10 July 2017, a few days after their birth, DSS filed juvenile petitions alleging Ike and Ivy were neglected juveniles based upon Respondent-Mother's inability to remedy the conditions that led to the six oldest children being removed from her care. That same day, DSS also obtained nonsecure custody of Ike and Ivy.

On 12 July 2017, DSS filed motions to terminate Respondent-Mother's parental rights in the six oldest children.

Following a hearing on 30 October 2017, the trial court entered an order on 11 December 2017 adjudicating Ike and Ivy neglected juveniles. In considering whether Ike and Ivy were at a substantial risk of future harm, the trial court gave "great weight" to Respondent-Mother's inability to provide sufficient care to the six oldest children during a trial placement in 2015. The trial court was also concerned Respondent-Mother had been inconsistent with her mental health treatment and

found Respondent-Mother's mental health led to the cessation of the trial placement. The trial court granted DSS legal custody of Ike and Ivy and provided Respondent-Mother with a minimum of four hours of supervised visitation a week. In order to remediate the conditions that led to Ike and Ivy's removal, the trial court ordered Respondent-Mother to submit to a comprehensive parenting capacity assessment; learn information regarding, and demonstrate a willingness and ability to address, Ike's and Ivy's developmental needs; consistently attend and engage in Ike's and Ivy's necessary appointments; and maintain stable housing and employment.

On 26 March 2018, the trial court terminated Respondent-Mother's parental rights in the six oldest children. Respondent-Mother appealed only the termination of her parental rights in the two oldest children, which this Court affirmed on 7 May 2019. *In re J.J.*, 265 N.C. App. 382, 826 S.E.2d 859 (2019) (unpublished).

Following several continuances, the trial court held a permanency planning hearing for Ike and Ivy on 18 February 2019. In the resulting order entered 2 April 2019, the trial court found Respondent-Mother had completed a parenting capacity assessment in February 2018, and been consistent in her mental health treatment. During the review period, the social worker observed Respondent-Mother providing appropriate care during her visits with Ike and Ivy; however, because Respondent-Mother had missed multiple, consecutive scheduled visits, visitation was suspended on 13 November 2018. The trial court found Respondent-Mother failed to maintain stable and appropriate housing and noted a "very concerning" Facebook post where

Respondent-Mother solicited a person willing to exchange weekend and evening childcare for free room and board. The trial court set a primary permanent plan of adoption with a concurrent plan of reunification with Respondent-Mother.

By the 11 June 2019 permanency planning review hearing, Respondent-Mother was no longer engaged in mental health services and had been inconsistent with follow-up efforts to restart services. Though Respondent-Mother failed to request any visitation with Ike and Ivy or petition the trial court to reinstate visitation, the trial court ordered Respondent-Mother be provided a minimum of two hours supervised visitation per week, with Respondent-Mother confirming visitation at least forty-eight hours in advance. The permanent plan remained unchanged, and the trial court ordered DSS to initiate proceedings to terminate Respondent-Mother's parental rights.

On 30 January 2020, DSS filed a petition/motion alleging grounds existed to terminate Respondent-Mother's parental rights in Ike and Ivy pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6), and (9) (2021). Following multiple continuances, the matter was heard in May 2022. In the resulting 12 August 2022 orders, the trial court concluded grounds existed to terminate Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (9), and termination of

Respondent-Mother's parental rights was in Ike and Ivy's best interests.[2] Respondent-Mother appeals.

II. Jurisdiction

This Court has jurisdiction to review Respondent-Mother's appeal pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Analysis

We review a trial court's adjudication that grounds exist to terminate parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re A.S.D.*, 378 N.C. 425, 428, 861 S.E.2d 875, 879 (2021) (citation omitted). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) (citation omitted). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

Respondent-Mother challenges several of the trial court's findings of fact as well as the conclusions of law that her parental rights were subject to termination. We first address her arguments under N.C. Gen. Stat. § 7B-1111(a)(9), which

[2] The orders also terminated the parental rights of the putative father and any unknown fathers. Respondent-Mother is the only party to this appeal.

provides for termination of parental rights when "[t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." N.C. Gen. Stat. § 7B-1111(a)(9) (2021). Termination under this ground "necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home." *In re L.A.B.*, 178 N.C. App. 295, 299, 631 S.E.2d 61, 64 (2006). A safe home is defined as "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C. Gen. Stat. § 7B-101(19) (2021).

As we consider only the evidentiary support for the findings necessary to support the trial court's conclusion Respondent-Mother's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(9), *see In re T.N.H.,* 372 N.C. at 407, 831 S.E.2d at 58–59, we address only Respondent-Mother's challenges, in whole or in part, to Findings of Fact 46, 84, 85, 86, 87, 89, and 105.[3] The trial court made the following relevant findings:

> 46. The parental rights of [Respondent-Mother] with respect to [the six oldest children] have been terminated involuntarily by a court of competent jurisdiction and she lacks the ability or willingness to establish a safe home for [Ike and Ivy].

[3] While Respondent-Mother has challenged portions of Findings of Fact 47 and 106, the challenged portions are not necessary to our review, and thus are not included above. Similarly, Findings of Fact 2, 4, 22, 40, 74, 90, 95, 96, 99, and 114 are irrelevant to our review pursuant to N.C. Gen. Stat. § 7B-1111(a)(9); thus, we do not address Respondent-Mother's challenges to those findings.

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> 68. In December of 2017, [Respondent-Mother] began dialectical behavior therapy, or DBT, at Carolina Outreach. . . . The DBT consists of two components. . . . In December 2017, [Respondent-Mother] had completed the first skill module related to mindfulness and was starting to work on the second skill of interpersonal effectiveness. [Respondent-Mother] discontinued with DBT shortly after December 2017.
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> 72. According to Dr. Harris-Britt in February 2018, it was possible that [Respondent-Mother] could provide a safe home for [Ike and Ivy] given her reported improvements in ADHD symptoms with DBT therapy, as well as the reduced executive functioning and attentional demands of caring for two versus six (or eight) children. . . . However, concerns remain due to collateral court records of [Respondent-Mother's] lack of acknowledgement of safety hazards in her current housing as well as [her] demonstrated difficulties with executive functioning and sustained attention during the evaluation process . . . . [Respondent-Mother] was informed that the appropriate treatment would likely be a combination of [DBT] . . . as well as a psychiatric medical evaluation to determine the need for resuming medication treatment for ADHD, PTSD, and/or any underlying depression. Dr. Harris-Britt noted that [Respondent-Mother] does not feel that she needs medication, and thus, a great deal of work will need to focus on building her insight and improving medication compliance.
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> 84. . . . . [T]his [c]ourt has reviewed the medical records from Carolina Outreach and [Respondent-Mother] was participating in DBT therapy until [she] began working at Duke Medical Center. Social Worker Wheeler contacted Carolina Outreach in August of 2021 and was informed that [Respondent-Mother] was not receiving services with

the agency. [Respondent-Mother] reported that she left Carolina Outreach because she lost funding. [Respondent-Mother] reported that she had been on a waitlist with Carolina Outreach since February 2019. [Respondent-Mother] had not followed up with Carolina Outreach regarding her status on the waitlist and her eligibility for mental health services with other providers; even though she reported calling thirty (30) different providers in the past. [Respondent-Mother] does not have Medicaid; however, she has private insurance through her employer . . . . [Respondent-Mother] voluntarily stopped going to therapeutic services at Carolina Outreach. [Respondent-Mother's] previous therapist at Carolina Outreach was a graduate student intern working under the close supervision of a licensed therapist. [Respondent-Mother] wanted to receive services directly from a licensed therapist at Carolina Outreach instead of a graduate student intern. In May 2019, [Respondent-Mother] reported to DSS that she had a list of therapists that [would] accept her insurance and [was] waiting to hear back from one at UNC. Presently, [Respondent-Mother] ha[s] not followed up with UNC.

85. [Respondent-Mother] left Carolina Outreach and began services with Dr. Franzen on October 28, 2019. The court has reviewed the records from Dr. David Franzen, and it does not appear to this [c]ourt that [Respondent-Mother] was engaging in therapy as recommended by Dr. Harris-Britt. The [c]ourt finds that the therapy was important in helping [Respondent-Mother] cope with her symptoms from her ADHD and PTSD.

86. According to Dr. Franzen's records, [Respondent-Mother's] participation in therapy was inconsistent as she missed multiple sessions due to personal reasons. Dr. Franzen's services have not dealt with [Respondent-Mother's] past traumas and her current mental health issues. Dr. Franzen's therapy sessions . . . appear to be guided by daily events in [Respondent-Mother's] life including COVID-19 stressors and feelings surrounding her children being in DSS custody. This [c]ourt is

concerned about [Respondent-Mother's] lack of consistency with her mental health services and the level of treatment [she] was receiving with Dr. Franzen. This court does not see Dr. Franzen providing any counseling to address [Respondent-Mother's] past traumas or provide her with any coping skills to address her serious mental health diagnosis.

87. [Respondent-Mother's] last appointment with Dr. Franzen was on April 16, 2021. Dr. Franzen discharged [Respondent-Mother] due to lack of participation. . . .

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89. The [c]ourt finds that [Respondent-Mother] has been inconsistent with her mental health treatment and medication management. [She] has not been in DBT therapy or receiving medication management since May 2021 . . . . The [c]ourt is concerned that [Respondent-Mother's] minimal and sporadic participation in mental health services has failed to correct the reasons why the children came into the care of Durham DSS. . . . [Respondent-Mother] failed to engage in the recommendations of Dr. Harris-Britt.

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102. Around the Summer of 2021, [Respondent-Mother] requested a home assessment of her residence. The date was set for the second week of July 2021. [Respondent-Mother] contacted Social Worker Wheeler a few minutes before the assessment and [Respondent-Mother] cancelled the appointment for personal reasons unknown to DSS. The social worker followed up with [Respondent-Mother], and [Respondent-Mother] then stated that she preferred that her attorney be present. Social Worker Wheeler instructed [Respondent-Mother] that once [Respondent-Mother] had contacted her attorney, she should have her attorney contact the social worker.

103. To date, the mother never followed up with the social worker. [Respondent-Mother's] current home has not been

> assessed. [Respondent-Mother] never contacted the social worker to have her home assessed by Durham DSS. Social Worker Wheeler has never seen the inside of [Respondent-Mother's] residence. [Respondent-Mother] never provided the social worker with any photos of her current home.
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> 105. Social Worker Wheeler had a conversation with [Respondent-Mother] about the living conditions of her previous homes. [Respondent-Mother] told the social worker that her home was a little messy due to having a small child. [Respondent-Mother] told Social Worker Wheeler that she now understands that she must pick things up. Without having a home assessment of [Respondent-Mother's] current home or photographs, the [c]ourt does not have information as to whether [Respondent-Mother's] current residen[ce] is suitable and stable for the children.

As to Finding of Fact 46, Respondent-Mother does not dispute her parental rights to her six oldest children have been involuntarily terminated; however, she contends there is insufficient evidence to support the portion of the finding that she is unable or unwilling to establish a safe home for Ike and Ivy. To the extent the trial court's determination requires application of the legal standard established by N.C. Gen. Stat. § 7B-101(19), it is in the nature of a conclusion of law. *See In re Ellis*, 135 N.C. App. 338, 340, 520 S.E.2d 118, 120 (1999) ("Whether a child is neglected or abused [as defined by N.C. Gen. Stat. § 7B-101(1) and (15)] is a conclusion of law."). Thus, we address this challenge during our *de novo* review of the trial court's relevant conclusions of law.

Respondent-Mother challenges the portion of Finding of Fact 84 that states she

voluntarily ceased mental health services at Carolina Outreach. She contends there was no testimony or evidence to establish she voluntarily ceased treatment, and her testimony established she left treatment due to a lack of funding, as also detailed in the finding. This portion of Finding of Fact 84, however, is supported by a substantively similar finding in the 6 August 2021 permanency planning review order, of which the trial court took judicial notice at the termination hearing. Thus, Finding of Fact 84 is supported by clear and convincing competent evidence. *See In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) (holding that a trial court's adjudicatory "findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings").

Respondent-Mother objects to the portions of Findings of Fact 85, 86, 87, and 89 that state she has been inconsistent with mental health services, and the services she did participate in were inadequate to address her specific mental health needs, as identified in her parental capacity assessment. Respondent-Mother's own testimony at the termination hearing, however, established she was not participating in services between February or March 2019, when she discontinued services at Carolina Outreach, and 28 October 2019, when she began seeing Dr. Franzen. Unchallenged Finding of Fact 68 denotes Respondent-Mother had previously discontinued DBT in 2017, prior to completing the program. The 6 August 2021 permanency planning review order, of which the trial court took judicial notice at the

termination hearing, establishes Respondent-Mother's inconsistency with treatment under Dr. Franzen, noting that she had missed "multiple sessions[.]"

Unchallenged Finding of Fact 72 contained Dr. Harris-Britt's recommendations for appropriate treatment, including DBT to address Respondent-Mother's trauma history and regulation of her behavior, attention, and emotions. Unchallenged Finding of Fact 75 notes that Respondent-Mother had not engaged in DBT since February 2018. The 6 August 2021 permanency planning review order noted that the therapy sessions with Dr. Franzen failed to address the areas identified for specific treatment. Thus, the findings reflecting that Respondent-Mother's mental issues were addressed inconsistently or inadequately are supported by competent evidence. *See In re A.S.D.*, 378 N.C. at 428, 861 S.E.2d at 879.

Respondent-Mother challenges the portion of Finding of Fact 105 where the trial court found it was unable to determine whether Respondent-Mother's current home was suitable absent a home assessment or any photographic evidence. Respondent-Mother contends there was no indication in Dr. Franzen's notes that her home was not suitable, and he would have observed at least a portion of the home during their virtual appointments. She also argues she was caring for her youngest child, born in 2019, in that residence, which presumably establishes that the home was safe and suitable. Respondent-Mother's assertions are without merit. This portion of the challenged finding is supported by Respondent-Mother's failure to allow a home visit or provide any other evidence to the social workers that her current home

was suitable. As discussed further below, the presence of the youngest child is insufficient to establish the home was safe or suitable.

Taken together, these findings, along with the extensive unchallenged findings detailed above, support the trial court's determination that Respondent-Mother was unwilling or unable to provide a safe home for Ike and Ivy. The trial court's findings establish that Respondent-Mother's ability to parent her oldest six children was greatly impacted by her mental health diagnoses, including PTSD and ADHD. The findings further establish that, during the underlying juvenile action involving Ike and Ivy, Respondent-Mother continued to minimize her symptoms, struggled with her symptoms, and had been inconsistent in seeking appropriate treatment to ameliorate her symptoms. Moreover, Respondent-Mother's ADHD symptoms resulted in her historical inability to make appropriate and safe decisions regarding housing, and there was no evidence that her current home was safe for Ike and Ivy. These findings are sufficient to demonstrate the substantial risks posed to Ike and Ivy by a return to Respondent-Mother's care. *See In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791 (affirming an adjudication under N.C. Gen. Stat. § 7B-1111(a)(9) based on the parents' longstanding and severe mental illness), *disc. rev. denied*, 359 N.C. 633, 614 S.E.2d 924 (2005).

We reject Respondent-Mother's arguments that the trial court failed to resolve a material conflict in the evidence regarding her fitness to parent. Respondent-Mother's arguments are based on the fact that her youngest child was born during

the pendency of Ike and Ivy's case, and he remained in her care "without DSS involvement" at the time of the termination hearing. She argues the court could not conclude she was unwilling or unable to provide a safe home for Ike and Ivy "because she had conclusively proven she could care for" her youngest child "over the last three years." Contrary to this assertion, Finding of Fact 91 was the only finding regarding the youngest child, and it merely stated he was born in February 2019 and was in Respondent-Mother's care at the time of the termination hearing. No findings were made, and no evidence was presented concerning whether Respondent-Mother was able to provide this child with appropriate care or whether her home was safe or suitable. Thus, there is no material conflict in the evidence regarding whether Respondent-Mother was unwilling or unable to provide Ike and Ivy with a safe home. *Cf. In re D.M.O.*, 250 N.C. App. 570, 580, 794 S.E.2d 858, 866 (2016) (vacating and remanding a termination order for further findings to resolve conflict between the testimony presented by the petitioner and respondent with regards to visitation).

Accordingly, we conclude the Record evidence and extensive findings of fact support the trial court's determination that Respondent-Mother was unwilling or unable to establish a safe home for Ike and Ivy. As Respondent-Mother does not contest that her parental rights in her oldest six children were involuntarily terminated, the trial court did not err in concluding grounds existed to terminate Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(9).

IV. Conclusion

We conclude the trial court's findings are sufficient to support its conclusion that Respondent-Mother's parental rights to Ike and Ivy should be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(9). Because a single ground is sufficient to support termination of Respondent-Mother's parental rights, we need not address Respondent-Mother's arguments regarding N.C. Gen. Stat. § 7B-1111(a)(1) or (2). *In re N.G.*, 374 N.C. 891, 904, 845 S.E.2d 16, 26 (2020). Moreover, Respondent-Mother does not challenge the trial court's conclusion that termination of her parental rights was in Ike's and Ivy's best interests. Thus, we affirm the trial court's orders terminating Respondent Mother's parental rights.

AFFIRMED.

Judges TYSON and RIGGS concur.

Report per Rule 30(e).