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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-140

Filed 17 October 2023

Surry County, Nos. 19JT29-31

IN THE MATTER OF: M.B., J.B., J.S., Minor Children.

Appeal by Respondent-Mother from Orders entered 4 October 2022 by Judge Marion M. Boone in Surry County District Court. Heard in the Court of Appeals 5 September 2023.

Partin and Cheek, by R. Blake Cheek, for Surry County Department of Social Services.

David A. Perez for Respondent-Appellant Mother.

James N. Freeman, Jr., Attorney for Guardian ad Litem.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Mother appeals from Orders entered 4 October 2022, terminating Respondent-Mother's parental rights. The Record before us, including the Supreme Court of North Carolina's opinion in Respondent-Mother's prior appeal, tends to

reflect the following:

On 22 March 2019, the Surry County Department of Social Services (DSS) filed Juvenile Petitions (Petitions) alleging Mary¹, James, and Joy to be neglected juveniles as defined by N.C. Gen. Stat. § 7B-101. The Petitions alleged that the children lived in an injurious environment due to Respondent-Mother's substance abuse, improper supervision, and unsanitary home conditions. DSS obtained nonsecure custody of the children, and the trial court adopted a permanent plan of reunification with a secondary plan of adoption.

On 23 December 2020, DSS filed a Motion to terminate Respondent-Mother's parental rights to the children, alleging grounds existed for termination based on neglect and willfully leaving the minor children in foster care without showing reasonable progress in correcting the conditions which led to the removal of the children from the home. On 7 April 2021, the trial court held a hearing on the Motion to Terminate Parental Rights. On 1 June 2021, the trial court entered an adjudication order, finding Respondent-Mother had not completed substance abuse treatment as required by her case plan; had tested positive for illicit substances on six drug screens; had not maintained safe and stable housing; and was not employed. The trial court further found Respondent-Mother was not making reasonable progress under the circumstances in correcting the conditions that led to the removal

¹ The juveniles are referred to by the parties' stipulated pseudonyms.

of the children, and, therefore, grounds existed to terminate Respondent-Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) and (2). In a separate disposition order entered the same day, the trial court concluded it was in the children's best interests that Respondent-Mother's parental rights be terminated, and Respondent-Mother's parental rights were terminated. Respondent-Mother timely appealed.

On appeal to the Supreme Court of North Carolina, Respondent-Mother contended the trial court failed to make the necessary determination on adjudication under N.C. Gen. Stat. § 7B-1111(a)(1) and (2). *In re M.B., J.B., J.S.*, 382 N.C. 82, 876 S.E.2d 260 (2022). Our Supreme Court concluded in relevant part:

To be sure, the trial court's findings of fact regarding respondent's lack of progress *could have* been sufficient to support a determination of a likelihood of future neglect. *See, e.g., In re O.W.D.A.*, 375 N.C. at 654. For instance, the trial court's unchallenged findings of fact demonstrated that respondent "ha[d] not obtained or maintained safe, suitable, and stable housing" and "ha[d] no visible means to support herself." But as written, the trial court's order fails to make the necessary and distinct determination of a likelihood of future neglect. This failure constitutes reversible error. Accordingly, we vacate this portion of the trial court's orders and remand the matter to the trial court for consideration of whether there was a likelihood of repetition of neglect.

Id. at 87, 876 S.E.2d 265. On remand, the trial court conducted an additional termination hearing, and on 4 October 2022, the trial court entered Orders of Adjudication and Disposition terminating Respondent-Mother's parental rights to the minor children.

Opinion of the Court

In the Adjudication Order, the trial court concluded in relevant part:

3. The Respondent Mother's actions, or lack of actions, [are] willful.

4. The juveniles have been neglected by Respondent Mother in the past and the likelihood of repetition of neglect in the future is substantial and significant if the minor children were returned to Respondent Mother's custody and care.

5. The [c]ourt concludes as a matter of law that Respondent Mother has willfully left the minor children in foster care for more than twelve (12) months without showing to the satisfaction of the [c]ourt that reasonable progress has been made under the circumstances in correcting those conditions which led to the removal of the juveniles from her custody and care.

As such, the trial court determined grounds exist to terminate Respondent-Mother's parental rights to the minor children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). In the Disposition Order, the trial court concluded it was in the minor children's best interests that Respondent-Mother's parental rights be terminated. On 5 October 2022, Respondent-Mother timely filed written Notice of Appeal.

Issue

The dispositive issue on appeal is whether the trial court properly determined grounds exist to terminate Respondent-Mother's parental rights in the minor children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Analysis

Respondent-Mother contends the trial court erred in concluding grounds exist

to terminate Respondent-Mother's parental rights to the minor children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). We disagree.

Our Courts have consistently held, “a finding by the trial court that any one of the grounds for termination enumerated in N.C.G.S. § 7B-1111(a) exists is sufficient to support a termination order.” *In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311 (2019) (citing *In re C.M.S.*, 184 N.C. App. 488, 491, 646 S.E.2d 592, 594 (2007)). Parental rights may be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) if “[t]he parent has . . . neglected the juvenile” within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2021).

A trial court may terminate parental rights based on prior neglect only if “the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents.” *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000) (citation omitted). In determining the likelihood of future neglect, our Supreme Court noted: “Because it lacks a crystal ball, a trial court may consider many past and present factors to make this forward-looking determination.” *In re M.B.*, 382 N.C. at 86, 876 S.E.2d at 264-65 (citing *In re L.H.*, 378 N.C. 625, 636, 862 S.E.2d 623, 631 (2021) (“[W]hile any determination of likelihood of future neglect is inevitably predictive in nature, the trial court’s findings were not based on pure speculation.”)). “For instance, a trial court ‘must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.’” *Id.* at 86, 876 S.E.2d at 265 (quoting *In re Z.V.A.*, 373 N.C.

207, 212, 835 S.E.2d 425 (2019)). Likewise, “[a] parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020) (citation and quotation marks omitted).

Here, our Supreme Court remanded this matter for the trial court to make an ultimate determination regarding the likelihood of future neglect. *In re M.B.*, 382 N.C. at 87, 876 S.E.2d at 265. In doing so, the Supreme Court noted:

[T]he trial court’s findings of fact regarding respondent’s lack of progress *could have* been sufficient to support a determination of a likelihood of future neglect. For instance, the trial court’s unchallenged findings of fact demonstrated that respondent “ha[d] not obtained or maintained safe, suitable, and stable housing” and “ha[d] no visible means to support herself.” But as written, the trial court’s order fails to make the necessary and distinct determination of a likelihood of future neglect. This failure constitutes reversible error.

Id. (citation omitted) (emphasis in original). On remand, in the 4 October 2022 Adjudication Order, the trial court expressly concluded: “The juveniles have been neglected by Respondent Mother in the past and the likelihood of repetition of neglect in the future is substantial and significant if the minor children were returned to Respondent Mother’s custody and care.” Thus, the trial court made the “necessary and distinct determination of a likelihood of future neglect” it failed to make in the 1 June 2021 Orders. Therefore, the trial court did not err in concluding Respondent-Mother’s parental rights were subject to termination based on neglect pursuant to

N.C. Gen. Stat. § 7B-1111(a)(1).² Consequently, we affirm the trial court's Termination of Parental Rights Orders.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's Orders terminating Respondent-Mother's parental rights to the minor children.

AFFIRMED.

Judges ZACHARY and FLOOD concur.

Report per Rule 30(e).

² Because we conclude this ground has ample support in the trial court's Findings, we need not address Respondent-Mother's arguments as to the remaining termination ground found by the trial court under N.C. Gen. Stat. § 7B-1111(a)(2).