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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-173

Filed 7 November 2023

Guilford County, No. 19 JT 119

IN THE MATTER OF:

N.M.C.

Appeal by respondent by writ of certiorari from order entered 25 October 2022 by Judge Marcus A. Shields in Guilford County District Court. Heard in the Court of Appeals 3 October 2023.

*Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.*

*N.C. Administrative Office of the Courts, by Guardian Ad Litem Appellate Counsel Matthew D. Wunsche and Guardian Ad Litem Staff Attorney Brittany T. McKinney, for guardian ad litem.*

*Robert W. Ewing for respondent-appellant mother.*

ZACHARY, Judge.

Respondent Mother appeals pursuant to writ of certiorari from the trial court's order terminating her parental rights to her minor child, Nancy.<sup>1</sup> We conclude that

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<sup>1</sup> A pseudonym is used to protect the identity of the minor child.

the evidence supports the trial court's findings of fact, which support the trial court's conclusion that the statutory ground of neglect exists to terminate Mother's parental rights. We therefore affirm the trial court's order terminating Mother's parental rights to Nancy.

### **BACKGROUND**

Nancy tested positive for cocaine at her birth in December 2019. Mother also tested positive for cocaine and admitted to using marijuana. Additionally, prior to Nancy's birth, a West Virginia trial court terminated Mother's parental rights to all five of her older children. The identity of Nancy's father was unknown at the time of her birth, and thus, he was not a possible placement. Accordingly, on 4 December 2019, the Guilford County Department of Health and Human Services ("DHHS") filed a petition alleging that Nancy was neglected and dependent, and obtained custody of Nancy.

DHHS offered Mother a service agreement in order to help her correct the conditions that led to Nancy's removal from her custody and to facilitate her reunification with Nancy; but Mother did not sign the service agreement, or any agreement regarding Nancy. "[M]other had the opportunity to enter into a service agreement" at her convenience, including at five scheduled meetings with DHHS staff during the period from February 2020 to April 2021, none of which Mother attended. The child protective services caseworker assigned to Nancy's case "advis[ed] [Mother]

of the components of the service agreement during a telephone call with [M]other as well as by email on or about July 15, 2020.”

While Nancy was in DHHS custody, Mother never provided DHHS staff with her permanent address or a copy of any lease agreement into which she had entered, but instead indicated that she was living with various friends and family, and that her current male roommate was supporting her financially. Nor did Mother obtain stable employment after Nancy’s birth; at one point she had a sales representative job, but her supervisor indicated that Mother failed to contact her supervisor or attend work.

Moreover, Mother failed to obtain a parenting psychological assessment and “never visited” Nancy while in DHHS custody. Therefore, Mother could not progress to visitation with Nancy. Mother neglected to obtain a substance abuse assessment or to attend one of the recommended drug programs, and she reported to her therapist that she continued to use marijuana frequently. Mother further refused to attend at least seven different drug screenings; on the one occasion that she submitted to testing, she tested positive for marijuana. The protective services caseworker reported that Mother did not “engage with [DHHS staff] in a consistent manner” while Nancy was in DHHS custody.

On 27 February 2020, the trial court adjudicated Nancy as a dependent and neglected juvenile, and on 22 April 2021, the trial court set a permanent plan of adoption, with a concurrent plan for reunification. Mother did not attend the

adjudicatory or disposition hearings. The trial court ordered DHHS to file a petition to terminate Mother's parental rights to Nancy, which DHHS did on 20 July 2021.

On 27 June 2022, this matter came on for hearing. On 25 October 2022, the trial court entered a termination order concluding that Mother's conduct with respect to her care for Nancy was inconsistent with her constitutionally protected rights and status of a parent, and that grounds existed to terminate Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect); 7B-1111(a)(2) (willful failure to make reasonable progress); 7B-1111(a)(6) (dependency); and 7B-1111(a)(9) (involuntary termination of parental rights to other children). The trial court then determined that it was in Nancy's best interest that Mother's parental rights be terminated and entered an order to that effect.

The record on appeal includes a certificate of service that indicates that the DHHS attorney served Mother with a copy of the order terminating parental rights on 25 October 2022. Mother filed written notice of appeal from the termination order on 12 December 2022. Mother subsequently amended the record to include a certificate of service filed 13 December 2022 indicating that the DHHS attorney served her with a copy of the termination order on 13 December 2022. Mother also filed a petition requesting that this Court issue its writ of certiorari, which we allow, in our discretion, in order to review the merits of Mother's appeal. *See* N.C.R. App. P. 21.

**DISCUSSION**

On appeal, Mother challenges every ground underlying the trial court's termination of her parental rights to Nancy. However, "[b]ecause only one ground is necessary to terminate parental rights, we only address [Mother]'s arguments regarding the ground of neglect." *In re M.A.*, 378 N.C. 462, 466, 862 S.E.2d 169, 173 (2021).

The "Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re M.B.*, 382 N.C. 82, 85, 876 S.E.2d 260, 264 (2022) (citation omitted). "At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence the existence of one or more grounds for termination" as provided by N.C. Gen. Stat. § 7B-1111(a). *Id.* (cleaned up); *accord* N.C. Gen. Stat. § 7B-1109(e)–(f) (2021).

On appeal from a trial court's order terminating parental rights, "we must review the evidence in order to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984). The trial court's conclusions of law are "subject to de novo review on appeal." *In re T.M.L.*, 377 N.C. 369, 371, 856 S.E.2d 785, 788 (2021) (citation omitted). "[W]e review only those findings necessary to support the trial court's determination that grounds existed to terminate [the] respondent's parental rights[.]" and any "[f]indings of fact not

challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal.” *Id.* (citation omitted).

In the present case, Mother argues that the trial court’s findings did not support the conclusion that neglect existed to terminate parental rights, and that the evidence did not support the court’s finding that Mother failed to “consistently communicate” with her caseworker. These arguments are unpersuasive.

“A trial court may terminate parental rights when it concludes the parent has neglected the juvenile within the meaning of [N.C. Gen. Stat.] § 7B-101.” *M.A.*, 378 N.C. at 466, 862 S.E.2d at 173. For the purposes of § 7B-1111(a)(1), a “neglected juvenile” is defined, in pertinent part, as “[a]ny juvenile . . . whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline” 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)(a), (e).

“When it cannot be shown that a parent is neglecting his or her child at the time of the termination hearing because 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 Z.V.A.*, 373 N.C. 207, 211–12, 835 S.E.2d 425, 429 (2019) (cleaned up). “The determinative factors must be the best interests of the child and the fitness of the parent to care for the child at the time of the termination proceeding.” *Id.* at 212, 835 S.E.2d at 430 (emphasis omitted). Substance abuse, failure to comply with the recommended case plan, and failure to maintain stable

housing and employment are all factors that may appropriately support a finding of neglect sufficient to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). *In re M.A.W.*, 370 N.C. 149, 153, 804 S.E.2d 513, 516 (2017).

In determining that grounds existed, at the time of the hearing, to terminate Mother's parental rights pursuant to § 7B-1111(a)(1), the trial court found that given Mother's "history of neglect," her failure to "participate fully in services," including her failure to enter into a case plan with DHHS, and her "ongoing neglect of [Nancy], it is likely that [Mother's] neglect will continue in the future." The trial court also made findings and conclusions concerning Mother's "failure to address her substance abuse and mental health issues, and her unstable lifestyle"; her failure to adequately support Nancy financially and "to provide a stable and safe home for" Nancy; and the fact that Mother "has not visited with [Nancy] since birth."

The trial court's findings are supported by clear, cogent, and convincing evidence, and the court's findings support its conclusion that Nancy is a "neglected juvenile" within the meaning of N.C. Gen. Stat. §§ 7B-1111(a)(1) and 7B-101(15).

Mother contends that the trial court's finding that she did not keep in consistent contact with her protective services caseworker and only minimally engaged with DHHS personnel was not supported by the evidence, because Mother would communicate with her caseworker via email "about once a month." However, Mother's protective services caseworker testified that there would be long periods of time "where [she] didn't hear from" Mother, and the evidence shows that Mother

missed several scheduled meetings with DHHS protective services personnel. *See In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020) (“Findings of fact supported by competent evidence are binding on appeal, despite evidence in the record that may support a contrary finding.”).

Mother also challenges the evidentiary basis for the trial court’s finding that she was unable to provide safe and stable housing for Nancy. Specifically, Mother argues that she testified at the hearing “that she is now in a position” to provide appropriate and stable housing for Nancy. Notwithstanding Mother’s testimony at the termination hearing, the trial court’s finding regarding Mother’s inability to provide stable housing is supported by competent evidence that Mother had not provided DHHS staff with her permanent address or a copy of a lease agreement, as well as Mother’s indication to DHHS staff that “she was just staying with different friends.” The evidence thus supported the trial court’s findings regarding Mother’s inability to provide stable housing for Nancy. *See id.*

The findings and evidence also show that Mother failed to sign or follow the recommended case plan, although she was informed of its objectives, and failed to attend several scheduled meetings with DHHS staff regarding a plan to visit—and ultimately to reunify—with Nancy. *See In re C.L.S.*, 245 N.C. App. 75, 78, 781 S.E.2d 680, 682–83 (affirming the trial court’s finding of neglect, in part, due to the father’s failure to sign a DSS case plan and his having “no-showed a couple of times” to appointments aimed at entering into a visitation plan), *aff’d*, 369 N.C. 58, 791 S.E.2d



457 (2016); *see also M.A.W.*, 370 N.C. at 154, 804 S.E.2d at 517 (“Although [the] respondent completed a parenting course, attended Alcoholics Anonymous meetings, and completed his General Educational Development (GED) program while incarcerated, the trial court made numerous relevant findings of fact supporting termination that illuminated [the] respondent’s behavior following his release and which established a likelihood of repetition of neglect.”). The evidence further showed that Mother quit her job and thereafter failed to maintain employment or otherwise financially support Nancy, including failing to pay court-ordered child support. *See C.L.S.*, 245 N.C. App. at 79, 781 S.E.2d at 683 (affirming the trial court’s determination of neglect, in part, where the father “never provided any financial support for” the minor child).

Additionally, Mother repeatedly refused to submit to drug testing and reported to her therapist that she continued to frequently use marijuana throughout the time that Nancy was in DHHS custody. *See M.A.W.*, 370 N.C. at 154, 804 S.E.2d at 517 (affirming order terminating parental rights, in part, due to the respondent’s “long history” of substance abuse and failure “to participate in any aspect of the recommendations from his Drug & Alcohol Assessment” (cleaned up)). Mother also neglected to complete her recommended substance abuse evaluation, parenting psychological evaluation, or her recommended parenting or family counseling. *See In re T.B.*, 380 N.C. 807, 812, 870 S.E.2d 119, 123 (2022) (“A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.”

(citation omitted)). According to Mother, she last attended therapy six weeks before the termination hearing. In fact, within the six weeks immediately preceding the termination hearing, Mother did not attempt to complete any aspect of her recommended case plan in order to move toward reunification with Nancy.

Thus, the trial court's findings are sufficient to support a conclusion of neglect for termination of parental rights purposes as well as a conclusion that it is likely Mother's neglect of Nancy would continue in the future. *See M.A.W.*, 370 N.C. at 153, 804 S.E.2d at 516; N.C. Gen. Stat. § 7B-101(15)(d). The trial court therefore did not in err in concluding that grounds existed to terminate Mother's parental rights for neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

Our careful review of the record reveals that the trial court's conclusion that grounds exist to terminate Mother's parental rights is supported by its findings, which, in turn, are supported by clear, cogent, and convincing evidence. *See M.A.*, 378 N.C. at 466, 862 S.E.2d at 173.

Mother does not challenge the trial court's conclusion that termination of her parental rights is in Nancy's best interest. Accordingly, we affirm the trial court's order.

### **CONCLUSION**

For the foregoing reasons, the trial court's order terminating Mother's parental rights to Nancy is affirmed.

**AFFIRMED.**

IN RE: N.M.C.

*Opinion of the Court*

Chief Judge STROUD concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).