

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-75

Filed 05 September 2023

Union County, No. 18JT154

IN RE:

B.C., A Minor Child.

Appeal by Respondent-Father from Order entered 20 September 2022 by Judge William F. Helms, III in Union County District Court. Heard in the Court of Appeals 21 July 2023.

Plyler, Long, & Corigliano, LLP, by Ashley J. McBride, for Petitioner-Appellee.

Peter Wood for Respondent-Appellant.

Poyner Spruill LLP, by Rohun S. Shah, Guardian ad Litem.

HAMPSON, Judge.

Respondent-Father appeals from the trial court's Order for Termination of Parental Rights to B.C., his minor child.¹ The trial court adjudicated two grounds

¹ The Order also terminated the parental rights of B.C.'s mother. However, B.C.'s mother is not a party to this appeal.

upon which to terminate Respondent-Father's parental rights: neglect and dependency. We conclude the trial court did not err in adjudicating neglect as a ground to terminate parental rights. As such, we do not address whether the trial court erred in adjudicating dependency as a ground to terminate Respondent-Father's parental rights. We further conclude the trial court did not abuse its discretion at disposition in determining it was in the best interests of B.C. to terminate Respondent-Father's parental rights. The Record before us tends to reflect the following:

Factual and Procedural Background

On 1 November 2018, the Union County Department of Social Services (DSS) filed a Petition alleging B.C. was a neglected and dependent juvenile. On 2 January 2019, the trial court adjudicated B.C. as both neglected and dependent. Subsequently, on 25 June 2021, DSS filed a Motion to Terminate Parental Rights alleging Respondent-Father's parental rights should be terminated on grounds of neglect and dependency.

On 20 September 2022, the trial court entered its Order for Termination of Parental Rights. The trial court adjudicated both neglect and dependency as grounds upon which to terminate Respondent-Father's parental rights. The trial court's adjudication of neglect as a ground to terminate parental rights was premised on Findings of Respondent-Father's continued drug abuse, failure to substantially comply with his case plan, and an ongoing cycle of relapses leading to unemployment

and homelessness. The trial court concluded this was evidence of a high probability of a repetition of neglect should B.C. be returned to Respondent-Father.

In the dispositional portion of its Order, the trial court considered the age of B.C., the likelihood of adoption, whether termination would aid in accomplishing the permanent plan for B.C., the bond between B.C. and her parents, B.C.'s relationship with the prospective adoptive parents, and a number of other relevant factors. Based on its consideration of these factors, the trial court concluded it was in the best interests of B.C. to terminate Respondent-Father's parental rights. In its decree, the trial court thus ordered: "The parental rights of [Respondent-Father] in and to his child [B.C.] are hereby terminated."

Respondent-Father timely filed Notice of Appeal on 23 September 2022.

Issues

The dispositive issues on appeal are whether the trial court: (I) erred in adjudicating neglect as a ground for terminating Respondent-Father's parental rights; and (II) abused its discretion by concluding it was in the best interests of B.C. to terminate Respondent-Father's parental rights.

Analysis

"A proceeding to terminate parental rights is a two step process with an adjudicatory stage and a dispositional stage. A different standard of review applies to each stage. In the adjudicatory stage, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that one of the grounds for termination of

parental rights set forth in N.C. Gen. Stat. § 7B-1111(a) exists. The standard for appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings of fact support its conclusions of law.” *In re D.R.B.*, 182 N.C. App. 733, 735, 643 S.E.2d 77, 79 (2007). “If the petitioner meets its burden of proving at least one ground for termination of parental rights exists under N.C. Gen. Stat. § 7B-1111(a), the court proceeds to the dispositional phase and determines whether termination of parental rights is in the best interests of the child. The standard of review of the dispositional stage is whether the trial court abused its discretion in terminating parental rights.” *In re C.C., J.C.*, 173 N.C. App. 375, 380-81, 618 S.E.2d 813, 817 (2005) (citation omitted).

I. Neglect

Section 7B-1111(a)(1) of our General Statutes provides for termination of parental rights based on a finding that “[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). The definition of a neglected juvenile includes, in relevant part: A juvenile who does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile’s welfare. N.C. Gen. Stat. § 7B-101(15) (2021).

Generally, “[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 L.O.K., J.K.W., T.L.W., & T.L.W.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (citation and quotation marks omitted). However, when “a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.” *Id.* (citation and quotation marks omitted). “In those circumstances, a trial court may find that grounds for termination exist upon a showing of a history of neglect by the parent and the probability of a repetition of neglect.” *Id.* (citation and quotation marks omitted). “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.” *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted). Thus, 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).

“That a parent provides love and affection to a child does not prevent a finding of neglect. Neglect exists where the parent has failed in the past to meet the child’s physical and economic needs and it appears that the parent will not, or cannot, correct

those inadequate conditions within a reasonable time.” *In re J.H.K.*, 215 N.C. App. 364, 369, 715 S.E.2d 563, 567 (2011) (citations omitted). Our Courts have typically looked to a “parent’s failure to make progress in completing a case plan [as being] indicative of a likelihood of future neglect.” *In re C.M.P.*, 254 N.C. App. 647, 655, 803 S.E.2d 853, 859 (2017) (citation omitted); *see also In re M.A.W.*, 370 N.C. 149, 154, 804 S.E.2d 513, 517 (2017) (finding the father’s failure to “follow through consistently with the court’s directives and recommendations” when not incarcerated supported a conclusion that neglect was likely to repeat).

In this case, with regard to the prior adjudication of neglect, the trial court found relevant to Respondent-Father:

20. On January 2, 2019, the Court adjudicated the juvenile as a neglected juvenile as defined in N.C. General Statute § 7B-101(15) in that:

(A) The juvenile does not receive proper care or supervision from the juvenile’s parent, guardian, custodian, or caretaker.

(B) The juvenile lives in an environment injurious to the juvenile’s welfare, in that:

i. The parents’ failure to provide proper care or supervision results in the child experiencing a substantial risk of such physical impairment.

ii. On February 26, 2018, [Mother] filed a restraining order alleging that [Respondent-Father] assaulted her.

iii. [Respondent-Father] does not have a stable living situation and has substance abuse issues.

iv. At the time the petition was filed, there was a Domestic Violence Protection Order against [Mother] for one year until August 16, 2019. This is due to alleged threats that [Mother] would snap [B.C.'s] neck. The Order granted temporary custody to [Respondent-Father] but did not provide for visitation for [Mother].

.....

viii. [Respondent-Father] attended substance abuse treatment at Turning Point in South Carolina from April 26, 2018 until July 10, 2018. [Respondent-Father] completed a Daymark Recovery Services assessment in September 2018 and was recommended to complete a 40-hour short term substance abuse group. According to his counselor, as of October 30, 2018, he missed at least five groups, and he must attend the "Decisions" group in order to get back into his recommended group due to the no-shows.

ix. [Respondent-Father] agreed to take random drug screens during the open DSS In-Home case, but he did not complete requested random drug screens on October 1, 2018, October 16, 2018, or October 29, 2018.

Regarding the adjudication of neglect as a ground to terminate parental rights, the trial court then found:

23. Pursuant to N.C.G.S. []§[]7B-1111, the Union County Division of Social Services has proven by clear, cogent, and convincing evidence that grounds exist for the termination of parental rights of [Respondent-Father] based on but not limited to the following:

(A) [Respondent-Father] has neglected the juvenile, to wit:

1) [Respondent-Father] has not made substantial progress in addressing his identified needs, to wit:

a) Substance Abuse.

i. [Respondent-Father] completed a substance abuse program at Daymark in 2019, including intensive outpatient groups and was given a trial placement with the juvenile on January 29, 2020.

ii. In February of 2020, [Respondent-Father] had a relapse, and he was kicked out of the home of [paternal grandmother] in which he was living with the juvenile. He placed the juvenile with the paternal grandmother at that time who indicated to Social Worker Etheridge that she cannot care for the juvenile long term.

iii. On May 24, 2020, [Respondent-Father] entered a 28-day treatment program with Anuvia Prevention & Recovery Center which he completed. He then moved to Ground 40, a halfway home for recovering substance users, and completed their aftercare program but stayed on for additional support.

iv. As of January 4, 2021, [Respondent-Father] was no longer in the Ground 40 program as he had violated their rules. [Respondent-Father] moved off of the property of Ground 40 on December 31, 2020.

v. On January 5, 2021, Social Worker Etheridge requested a drug screen from [Respondent-Father], and it came back positive for cocaine. [Respondent-Father] admitted to the relapse.

vi. From January 2021 until April 2021, [Respondent-Father] was residing at the Community Shelter of Union County.

vii. [Respondent-Father] reports that he is attending Narcotics Anonymous since leaving Ground 40 and participates in programs at Ground 40 as well.

viii. [Respondent-Father] has not participated in treatment at Daymark and has only attended one of his medication management appointments at Daymark since leaving

Ground 40.

ix. [Respondent-Father] has 20 years of cocaine use and a cycle of relapsing. He obtains a place to live, participates in treatment then relapses, thus losing employment and a place to live.

x. [Respondent-Father] relapsed at least 5 times within a year and a half. The dates were in February of 2020 and in January, April, July and November of 2021.

2) Based on the historical facts of this case, due to [Respondent-Father]'s history of relapsing, there is a high probability of repeated neglect if the juvenile is returned to [Respondent-Father].

3) [Respondent-Father] has failed to substantially comply with his Out of Home Services Agreement. Failure to comply with his case plan is indicative of the probability of repeated neglect.

3) [sic] [Respondent-Father]'s continual relapses, failure to maintain sobriety and repeated homelessness are all indicative of the probability of repeated neglect.

Based on these Findings of Fact, the trial court concluded as a matter of law:

7. Pursuant to N.C.G.S. []§[]7B-1111, the Union County Division of Social Services has proven by clear, cogent, and convincing evidence that grounds exist for the termination of parental rights of [Respondent-Father].

8. [Respondent-Father] has neglected the juvenile.

9. Based on the historical facts of this case, there is a high probability of repeated neglect if the juvenile is returned to [Respondent-Father].

Respondent-Father contends the trial court erred in adjudicating neglect as a ground for terminating his parental rights. While Respondent-Father acknowledges

many of the trial court's Findings are accurate, he cursorily notes his dispute with the trial court's Finding that he failed to substantially comply with his case plan. However, Respondent-Father makes no argument this Finding is not supported by competent evidence in the Record. Rather, Respondent-Father focuses his argument on the trial court's Finding and Conclusion that there was a high probability of repeated neglect if B.C. was returned to his custody. Specifically, Respondent-Father contends the trial court's Findings cannot support a conclusion of a probability of future neglect because there was no showing Respondent-Father used illegal drugs around B.C. or that there was any risk of harm to B.C. arising from Respondent-Father's substance abuse.

However, it is evident from the trial court's Findings of Fact, its adjudication of neglect as a ground to terminate Respondent-Father's parental rights was not premised solely on the fact Respondent-Father abused—and continued to abuse—drugs. To the contrary, the trial court found Respondent-Father had a pattern of relapsing, resulting in a continual cycle of Respondent-Father's unemployment and repeated homelessness. The trial court's factual Findings in this regard are indicative of a "fail[ure] in the past to meet the child's physical and economic needs and it appears that the parent will not, or cannot, correct those inadequate conditions within a reasonable time." *J.H.K.*, 215 N.C. App. at 369, 715 S.E.2d at 567 (citation omitted).

Moreover, it is also evident the trial court considered changes in circumstances between the initial adjudication of neglect and the termination proceeding. As the trial court noted, the original neglect adjudication was based, in part, on Respondent-Father's substance abuse and unstable living situation. The trial court acknowledged Respondent-Father had subsequently completed a substance abuse program in 2019 and was granted a trial placement with B.C. in January 2020. However, Respondent-Father relapsed in February 2020 and was "kicked out" of his mother's home. Likewise, the trial court acknowledged Respondent-Father completed a 28-day treatment program in May 2020. However, by January 2021, Respondent-Father was no longer enrolled in the after-care recovery program and moved out of the halfway house after violating program rules. A January 2021 drug test was positive for cocaine. Between January and April 2021, Respondent-Father resided at a community shelter and had attended only one medication management appointment since leaving the halfway house. The trial court further found five instances of Respondent-Father relapsing over a period between February 2020 and November 2021. The trial court also found Respondent-Father's failure to substantially comply with his case plan as indicative of a risk of future neglect.

Thus, the trial court properly considered evidence of changed circumstances following the initial adjudication of neglect in determining whether there was a probability of continued neglect of B.C. should B.C. be returned to Respondent-Father. Therefore, the trial court's Findings of Fact support its Conclusion there was

a high probability of repeated neglect if B.C. was to be returned to Respondent-Father. Consequently, the trial court did not err by adjudicating neglect as a ground upon which to terminate Respondent-Father's parental rights.²

II. Best Interests

Respondent-Father also argues the trial court abused its discretion in the disposition phase of the termination proceeding by determining it was in the best interests of B.C. to terminate Respondent-Father's parental rights. We disagree.

When determining whether termination of parental rights is in the best interests of the child, N.C. Gen. Stat. § 7B-1110(a) requires the trial court consider:

- (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.
- (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.

² Because we conclude the trial court did not err in adjudicating neglect as a ground to terminate parental rights, we need not address the trial court's adjudication of dependency as a separate ground to terminate parental rights. *In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014) ("it is well established that any single ground . . . is sufficient to support an order terminating parental rights. Therefore, if we determine that the court properly found one ground for termination under N.C. Gen. Stat. § 7B-1111(a), we need not review the remaining grounds." (citations and quotation marks omitted)).

N.C. Gen. Stat. § 7B-1110(a). “[T]he language of [N.C. Gen. Stat. § 7B-1110(a)] requires the trial court to consider all six of the listed factors[;]” however, “the court must enter written findings in its order concerning only those factors that are relevant.” *In re D.H.*, 232 N.C. App. 217, 220-21, 753 S.E.2d 732, 735 (2014) (citations and quotation marks omitted).

Here, Respondent-Father contends the trial court was required to consider placement of B.C. with her paternal grandmother as an additional “relevant consideration” and alternative to terminating Respondent-Father’s parental rights. It is accurate that the trial court did not make any dispositional findings regarding a possible placement with B.C.’s paternal grandmother. However, as a general proposition, the trial court did make Findings with respect to the six statutory factors, including other relevant considerations, in determining the best interests of B.C.

Moreover, the Record contains evidence and prior judicial findings indicating the paternal grandmother was either non-committal to being, or unwilling to be, a long-term placement for B.C. This includes an unchallenged Finding in the adjudication phase of the termination proceeding—found by clear, cogent, and convincing evidence—that after Respondent-Father relapsed in February 2020, the paternal grandmother “indicated to Social Worker Etheridge that she cannot care for the juvenile long term.” As such, in light of the fact paternal grandmother was herself hesitant to being a long-term placement for B.C., it was not unreasonable for the trial court not to consider a possible placement with the paternal grandmother as an

additional relevant consideration—particularly given the trial court’s weighing of other factors including the permanent plan for the child and the bond with the prospective adoptive parents.

Thus, the trial court did not abuse its discretion by not considering placement of B.C. with the paternal grandmother as an additional relevant consideration in determining B.C.’s best interests. Therefore, the trial court properly considered the required statutory factors in determining the best interests of B.C. Consequently, the trial court also did not abuse its discretion in determining it was in the best interests of B.C. to terminate Respondent-Father’s parental rights.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court’s 20 September 2022 Order for Termination of Parental Rights.

AFFIRMED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).