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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-630

Filed 20 February 2024

Buncombe County, Nos. 07 JT 299, 17 JT 85-86

IN RE: N.L.N., N.N. and N.B.G.J., Minor Juveniles

Appeal by Respondent-Mother from Orders entered 2 November 2022 and 17 April 2023 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 22 January 2024.

Suzanne Avett for Petitioner-Appellee Buncombe County Department of Health and Human Services.

Jackson M. Pitts for Guardian ad litem.

Jason R. Page for Respondent-Appellant Mother.

PER CURIAM.

Respondent, mother of N.L.N. (Nathan)¹, N.N. (Nick), and N.B.G.J. (Nancy), appeals from orders terminating her parental rights. For the reasons stated herein, we affirm.

I. Background

¹ Pseudonyms are used for the juveniles as stipulated to by the parties.

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Nathan was born in September 2006. On 25 July 2007, Buncombe County Department of Health and Human Services (DHHS) obtained nonsecure custody of Nathan and filed a petition alleging him to be a neglected and dependent juvenile. The petition alleged on 23 July 2007, DHHS received a report Respondent was using drugs, and the family home was in an “appalling condition.” The home had no running water; the refrigerator was inoperable and infested with bugs; the toilet was clogged with a combination of newspaper, plastic bags, and feces; and the bedding in the home was “stained, filthy and unkempt.” Nathan and his five older siblings² had “not eaten in some time” and would frequently play in the streets unsupervised. The petition further alleged Respondent and her boyfriend, M.S., had a history of domestic violence, and that in March 2007, they had been involved in a domestic violence incident in the presence of Nathan and his older siblings.

On 25 October 2007, the trial court entered an order adjudicating Nathan to be a neglected and dependent juvenile. Respondent was ordered to complete and follow the recommendations of a psychological evaluation, substance abuse assessment, and domestic violence assessment; submit to random drug screens; and obtain and maintain suitable housing and employment. After two years in DHHS custody, Nathan was returned to the custody of Respondent pursuant to a permanency planning order entered 4 November 2009.

² Nathan’s older siblings are not subjects of this appeal.

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Nancy was born in February 2009, and Nick was born in June 2013. On 28 March 2017, DHHS obtained nonsecure custody of Nathan, Nancy, and Nick (collectively “the children”), and filed juvenile petitions alleging them to be neglected juveniles. The petitions alleged on 24 February 2017, DHHS received a report that one of Respondent’s other minor children, who is not a subject to this appeal, had been suspended from school after engaging in an altercation with another student. Respondent had been encouraging the minor child to engage in physical fighting. The school informed Respondent the minor child could not return until Respondent met with the principal, but Respondent refused to do so.

The petition further alleged the children reported substance use by Respondent and physical fighting in the home between Respondent and her children, as well as between Respondent and her siblings. During an unannounced home visit on 26 February 2017, Respondent would not allow a social worker into the home and was “highly agitated” during the exchange. On an unscheduled home visit that took place on 2 March 2017, Respondent would not allow a social worker into the home, stated there was nothing wrong with her children, and refused to meet with the social worker later in the week to discuss her case.

The petition also alleged that on 10 March 2017, DHHS received a report Respondent had been involved in a physical altercation with her adult daughter. Respondent was intoxicated during the incident and was the aggressor. Nathan and Nancy intervened during the incident and were both hit. Respondent called law

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enforcement to the scene but refused to allow them into her home. Later that day, a social worker and police officer located Respondent and the children at the home of Respondent's boyfriend, A.N., and noticed a strong odor of marijuana outside the front door. Respondent's older children reported observing domestic violence between Respondent and A.N., as well as Respondent's use of alcohol and cocaine. Respondent admitted to regularly using marijuana. On 26 March 2017, DHHS received another report that Respondent had been charged with domestic violence and simple assault after being involved in an argument with A.N. Law enforcement, who reported to the scene, observed Respondent to be intoxicated while in the children's presence.

On 3 January 2018, the trial court entered orders adjudicating the children to be neglected and continuing custody with DHHS. The trial court also entered interim dispositional orders on 3 January 2018 wherein Respondent was ordered to submit to random urine drug screens and a hair follicle drug screen.

The trial court entered dispositional orders on 9 February 2018, and Respondent was ordered to: sign releases of information for mental health and substance abuse providers; complete a comprehensive clinical assessment (CCA) with a mental health provider and follow recommendations; complete a substance abuse assessment; complete random drug screens within twenty-four hours of request by DHHS, including hair follicle testing; and engage in the Batterer's Intervention Program.

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Following a permanency planning hearing on 23 March 2018, the trial court entered orders on 30 April 2018 finding Respondent had not engaged in the Batterer's Intervention Program and had "minimally engaged" in services. The primary permanent plan was set as reunification, with a secondary plan of guardianship.

Following a permanency planning hearing on 12 July 2018, the trial court entered orders on 1 August 2018 finding Respondent had recently tested positive for marijuana.

Following another permanency planning hearing on 13 December 2018, the trial court entered orders on 11 February 2019 finding Respondent completed a CCA on 2 April 2018. It was recommended she engage in the following: "Supportive Employment, Family Therapy, Group Therapy, Individual Therapy, Peer Support Specialist and Psychiatric Medication Management." However, she had not engaged in any recommended services. Respondent had not completed a substance abuse assessment and had been discharged from the Batterer's Intervention Program on 12 September 2018 for behavior that violated the group policy. She had not returned to the program. On 4 November 2018, police were called to Respondent's home after she was involved in a physical altercation with her adult daughter.

Following a permanency planning hearing on 9 April 2019, the trial court entered orders on 10 May 2019 finding that in December 2018, Respondent had fallen and sustained serious injuries. She was discharged from a rehabilitation hospital on 18 February 2019, and when DHHS requested a home visit, Respondent would not

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disclose her address and refused to sign releases. The primary permanent plan was changed to adoption, with a secondary plan of guardianship.

On 7 June 2019, DHHS filed petitions to terminate Respondent's parental rights in the children. DHHS alleged grounds existed to terminate Respondent's parental rights for neglect, willfully leaving the children in foster care or placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(2), (6) (2023).

Following permanency planning hearings on 21 August 2019 and 5 February 2020, the trial court entered orders on 23 September 2019 and 6 April 2020, finding Respondent had made no progress on her case plan.

A permanency planning hearing was held on 20 August 2020, and the trial court entered orders on 30 September 2020. The trial court found that although Respondent testified at the hearing, her testimony was not credible, as it contradicted her prior testimony and court findings.

Following a permanency planning hearing on 14 January 2021, the trial court entered orders on 18 February 2021 finding Respondent had tested positive for “extended opiates, hydrocodone, and THC metabolites” in August 2020. She had not initiated contact with DHHS since the last hearing.

A permanency planning hearing was held on 9 July 2021, and the trial court entered orders on 18 August 2021 finding Respondent had not alleviated the issues

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that brought the children into DHHS custody. DHHS had taken steps to help Respondent re-enroll in the Batterer's Intervention Program, but Respondent only wanted to discuss her previous termination from the program. Respondent had not completed random drug screens as requested by DHHS in February 2021 and June 2021. Another permanency planning hearing was held on 11 January 2022, and the trial court entered orders on 21 March 2022 finding the conditions that led to DHHS's involvement with the family continued to exist.

The adjudicatory portion of the termination hearing took place on 20 May, 28 July, 27 September, and 28 September 2022. The trial court entered an order on 2 November 2022 adjudicating the existence of grounds to terminate Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)–(2). The dispositional portion of the hearing was held on 12 January 2023, and the trial court entered an order on 17 April 2023 concluding it was in the children's best interests that Respondent's parental rights be terminated, *see* N.C. Gen. Stat. § 7B-1110(a) (2023), and terminated her parental rights. Respondent appeals.

II. Discussion

On appeal, Respondent challenges the trial court's adjudication of the existence of both grounds to terminate her parental rights.

When reviewing the trial court's adjudication of grounds for termination, we examine whether the court's findings of fact are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Any unchallenged findings are deemed supported

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by competent evidence and are binding on appeal. The trial court's conclusions of law are reviewed de novo.

In re Z.G.J., 378 N.C. 500, 508–09, 862 S.E.2d 180, 187 (2021) (citations, quotation marks, and brackets omitted). “[A]n adjudication of any single ground in N.C. [Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citations omitted).

We first consider Respondent's challenges to the trial court's Conclusion of neglect under N.C. Gen. Stat. § 7B-1111(a)(1). A trial court may terminate parental rights under this ground if it concludes the parent has neglected the juvenile within the meaning of N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1) (2023). A neglected juvenile is defined, in pertinent part, as a 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) (2023).

“[I]f 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) (citation omitted). “When determining whether future neglect is likely, the trial court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.” *In re Z.A.M.*, 374 N.C. 88, 95, 839 S.E.2d 792, 797 (2020) (citing *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232

(1984)). The “determinative factors” in assessing the likelihood of a repetition of neglect are “the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding.*” *In re Z.G.J.*, 378 N.C. at 509, 862 S.E.2d at 188 (quoting *In re Ballard*, 311 N.C. at 715, 319 S.E.2d at 232) (emphasis in original). “A parent’s failure to make progress in completing a case plan is indicative of a likelihood of future neglect.” *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018).

Here, Respondent does not dispute the children were previously adjudicated neglected. Instead, Respondent makes challenges to several of the trial court’s Findings of Fact and argues that the Findings of Fact are insufficient to support its Conclusion of Law that there is a likelihood of repetition of neglect if the children were returned to her care. We address each argument in turn.

A. Challenged Findings of Fact

At the outset, we note that our review is limited to those Findings which are necessary to our determination of whether the trial court properly found neglect as a ground for termination. *See In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58-59 (2019) (“Moreover, we review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.”).

First, Respondent asserts that Findings of Fact 24 through 40, which concern the circumstances surrounding DHHS obtaining custody of Nathan in 2007, should

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be stricken because there was no testimony given at the termination hearing to support these Findings. However, the trial court made the same Findings in its 25 October 2007 order adjudicating Nathan to be a neglected and dependent juvenile. Respondent did not appeal from the trial court's 25 October 2007 adjudication order and is therefore "bound by the doctrine of collateral estoppel from re-litigating these findings of fact." *Id.* at 409, 831 S.E.2d at 60 (citing *King v. Grindstaff*, 284 N.C. 348, 356, 200 S.E.2d 799, 805 (1973)).

Respondent challenges Finding of Fact 65 which provides that "[t]he respondent mother has substance abuse issues. The respondent mother is a perpetuator of domestic violence." She argues there was no evidence that she "currently has substance abuse issues" or has "any current issues with domestic violence." We disagree.

Respondent's case plan required her to complete a substance abuse assessment and random drug screens within twenty-four hours of request by DHHS. Unchallenged Findings, which are binding on appeal, establish Respondent was diagnosed with "Cannabis Use Disorder, Mild, and Alcohol Use Disorder, Mild[.]" yet she continued to use marijuana and drink alcohol at the time of the termination hearing. DHHS social workers testified at the termination hearing that Respondent had not undergone any substance abuse treatment despite there being a recommendation to do so. Moreover, Respondent had not been compliant with drug screens requested by DHHS. DHHS had requested drug screens in July, November,

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and December of 2021, as well as in January, February, and May of 2022. Respondent had not complied with any of them. The last drug screen completed by Respondent had occurred in September 2020.

In addition, Respondent had been ordered to engage in the Batterer's Intervention Program as part of her case plan. She was terminated from the program and declined to re-enroll in March of 2021. A DHHS social worker testified at the termination hearing that Respondent had not completed the Batterer's Intervention Program or any domestic violence program. The foregoing evidence supports the trial court's Finding that Respondent had not addressed substance abuse or domestic violence concerns by the time of the termination hearing.

Respondent argues Finding of Fact 79, which states Respondent "tested positive for marijuana and opiates" on 18 September 2020 is not supported by the evidence. While a DHHS social worker testified that Respondent completed a drug screen on 18 September 2020, there is no clear, cogent, and convincing evidence regarding the results of that screen. Accordingly, we disregard this Finding. *See In re J.M.*, 373 N.C. 352, 358, 838 S.E.2d 173, 177 (2020) (disregarding factual findings not supported by the record).

Respondent challenges Finding of Fact 80 which provides that "[o]n May 16, 2022, SW Cole requested the respondent mother complete a drug screen. The respondent mother did not submit to the drug screen." However, DHHS social worker Theresa Cole testified that the most recent drug screen request was submitted on 16

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May 2022, and Respondent did not comply with the request. Thus, Respondent's challenge to this Finding is overruled.

Respondent argues Finding of Fact 91 is unsupported by the evidence. Finding 91 provides “[t]he respondent mother has failed to maintain contact with [DHHS]. The respondent mother is most responsive to text message; however, her current address is unknown. Mail to the respondent mother’s most recent addresses was returned.” This Finding is supported by DHHS social worker Cole’s testimony. Cole testified she had a difficult time maintaining contact with Respondent; she would mail letters to Respondent’s residence, but Respondent was “more responsive” to text messages; she believed Respondent currently lived in Walton, “but sometimes mail does get returned to [DHHS] from that address”; and Respondent had not initiated any contact with DHHS outside of “the first six months of the case[.]” Based on the foregoing testimony, Respondent’s argument as to Finding of Fact 91 is without merit.

Next, Respondent contends that Findings of Fact 24 through 62, 64, 66 through 76, and 78 address conditions from 2006 to 2019, do not address current circumstances, and are not relevant to a determination of whether there is a likelihood of repetition of neglect. As previously discussed, Respondent cannot relitigate Findings 24 through 40. As to Findings of Fact 41 through 62, 64, 66 through 76, and 78, because Respondent does not contest the evidentiary basis for these Findings, they are binding on appeal. *See In re Z.G.J.*, 378 N.C. at 508–09, 862

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S.E.2d at 187. Respondent's argument that these Findings have no bearing on whether the children are likely to be neglected if returned to her care will be addressed below as part of our determination of whether the trial court's Findings support its Conclusion that there is a likelihood of repetition of neglect if the children were returned to Respondent's care.

B. Likelihood of Repetition of Neglect

Respondent argues the trial court did not make sufficient Findings regarding her current circumstances and that the remaining Findings of Fact are insufficient to support a determination of future neglect. We are not persuaded.

Here, the trial court concluded as follows:

Pursuant to N.C.G.S. § 7B-1111(a)(1) the respondent mother has neglected the minor children, [Nathan, Nancy, and Nick]. The minor child[ren] ha[ve] been exposed to substance abuse and domestic violence by the respondent mother. There is a reasonable probability of repetition of neglect as the respondent mother has failed to successfully complete court ordered services to address these issues and has failed to maintain regular contact with [DHHS], as specified above. The respondent mother continues to engage in conduct not in the best interests of the minor child[ren].

To support its Conclusion, the trial court made numerous Findings, including Findings 24 through 62, 64, 66 through 76, and 78, detailing DHHS's history with Respondent dating back to 2006. These Findings show Respondent's extensive history of substance abuse, mental health, and domestic violence issues. Respondent asserts these Findings "have no bearing on whether she is likely to neglect her

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children 15 years later, nor whether she has made sufficient progress toward eliminating those circumstances.” However, this Court has held that in terminations based upon neglect, “the decision of the trial court must of necessity be predictive in nature, as the trial court must assess whether there is a substantial risk of future abuse or neglect of a child based on the historical facts of the case.” *In re K.D.*, 178 N.C. App. 322, 328, 631 S.E.2d 150, 154–55 (2006) (citation and quotation marks omitted). While the trial court must consider evidence of changed circumstances, the past period of neglect is pertinent to a determination of whether there is a likelihood of future neglect. *See In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797. Thus, we reject Respondent’s argument that these Findings have no relevancy.

The trial court’s Findings establish that in order to address the concerns that led to the children’s removal from Respondent’s care, Respondent was ordered to complete a CCA and follow recommendations; complete a substance abuse assessment; comply with random drug screens; and engage in the Batterer’s Intervention Program. The Record evidence and the trial court’s Findings, however, show Respondent failed to fully comply with any of the components of her case plan.

Respondent completed two CCAs, one in 2018 and one in 2019, and it was recommended she complete several services, including supportive employment, group therapy, family therapy, individual therapy, peer support, and psychiatric medication management. Nevertheless, she failed to comply with the recommendations of either CCA.

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With regard to substance abuse concerns, Respondent was diagnosed with “Cannabis Use Disorder, Mild, and Alcohol Use Disorder, Mild[,]” but she never participated in any substance abuse or alcohol abuse treatment. She continued to use marijuana and consume alcohol at the time of the termination hearing. Most recently, she did not comply with a random drug screen requested by DHHS on 16 May 2022.

Furthermore, Respondent did not complete the Batterer’s Intervention Program or any other domestic violence program. Respondent had completed 23 out of 26 classes of the Batterer’s Intervention Program but was terminated from the program after she restrained Nathan during a supervised visit and law enforcement had to intervene. In March 2021, DHHS made a referral in order for Respondent to reengage in the program, but Respondent declined to reenroll.

The trial court’s Findings demonstrate that by the time of the termination hearing, Respondent had failed to make progress in completing her case plan and there remained unresolved mental health, substance abuse, and domestic violence issues. We conclude the trial court made adequate Findings to support its Conclusion that there was a probability of a repetition of neglect if the children were returned to Respondent’s care. Accordingly, we affirm the trial court’s determination that Respondent’s parental rights in the children were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(1). Because only one ground is necessary to support a termination of parental rights, *see In re E.H.P.*, 372 N.C. at 395, 831 S.E.2d at 53, we

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do not address Respondent's challenge to the remaining ground for termination adjudicated by the trial court. Moreover, because Respondent does not challenge the trial court's best interests determination at the dispositional stage, we affirm the order terminating her parental rights.

III. Conclusion

The trial court's 2 November 2022 order terminating Respondent's parental rights in Nathan, Nick, and Nancy is affirmed.

AFFIRMED.

Panel consisting of Judges MURPHY, COLLINS, and HAMPSON.

Report per Rule 30(e).