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NO. COA11-140
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF:

B.E., C.C., L.C.

New Hanover County
Nos. 08 JT 247-49

Appeal by respondent-mother and respondent-father from an order entered 12 November 2010 by Judge Jeffrey Evan Noecker in New Hanover County District Court. Heard in the Court of Appeals 15 August 2011.

Regina Floyd-Davis, for petitioner-appellee New Hanover County Department of Social Services.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Megan P. Black, for guardian ad litem.

Edward Eldred, for respondent-appellant mother.

Jeffrey L. Miller, for respondent-appellant father.

MARTIN, Chief Judge.

Respondent-mother and respondent-father each appealed from the trial court's order terminating their parental rights. Respondent-father died during the pendency of this appeal,

rendering his appeal moot. Thus we consider only the order terminating respondent-mother's parental rights in the juveniles B.E., C.C., and L.C.

The New Hanover County Department of Social Services (the "petitioner") first became involved with the family on 15 September 2008. The petitioner was called after respondents were involved in an incident of domestic violence on 14 September 2008. Respondents were living in a Wilmington motel with the three juveniles at the time of the incident. They were drinking when respondent-father threw respondent-mother against a wall after she spurned his sexual advances. On 16 September 2008, a juvenile petition was filed alleging that the juveniles were neglected and dependent. On the same day, the juveniles were placed in non-secure custody.

On 16 December 2008, Judge Jeffrey E. Noecker entered an order adjudicating the juveniles neglected and dependent. The order is based upon respondents' stipulation to the allegations of domestic violence and substance abuse contained in the petition. The trial court ordered the juveniles to remain in the petitioner's custody and required the petitioner to continue to make reasonable efforts to provide or arrange for foster care or other placement. Respondents were each ordered to refrain from using illegal substances, complete a substance abuse

assessment, comply with all recommendations, submit to random drug screens, sign releases, and refrain from domestic violence.

On 26 May 2010, the trial court entered an order in which it changed the juveniles' permanent plan to adoption. The plan also relieved petitioner of responsibility for any reunification efforts. Respondents were permitted weekly supervised visits with the juveniles. On 15 July 2010, a petition was filed to terminate respondents' parental rights after respondent-mother was charged with DWI, driving with a revoked license, and simple possession. As to both respondents, petitioner alleged that the juveniles were neglected and that respondents had willfully left the juveniles in a placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that led to their removal from the home. As to respondent-mother only, petitioner alleged that she had failed to pay a reasonable portion of the cost of the juveniles' care for a period of six months prior to the filing of the petition.

At the termination hearing, social workers Stephanie Matthews, Maureen Fisher, and Tiffany Bickel testified at the adjudication phase, as did respondent-mother. Guardian ad litem Janette Johnson testified at the disposition phase. The trial court made numerous findings of fact and concluded that grounds

existed to terminate respondents' parental rights due to neglect and willful failure to make reasonable progress. The order also concluded that termination of respondents' parental rights was in the juveniles' best interest.

Respondent-mother argues that several of the trial court's findings of fact are not supported by sufficient evidence and, in turn, do not support the court's conclusion that grounds existed to terminate her parental rights. We affirm the trial court's order terminating respondent-mother's parental rights.

On appeal, our review of an order terminating parental rights requires us to determine "whether the court's 'findings of fact are based upon clear, cogent and convincing evidence' and whether the 'findings support the conclusions of law.'" *In re Pope*, 144 N.C. App. 32, 40, 547 S.E.2d 153, 158 (quoting *In re Huff*, 140 N.C. App. 288, 292, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001)), *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001). "Our review of the trial court's findings of fact is limited to whether there is competent evidence to support the findings; however, the trial court's conclusions of law are reviewable de novo." *Id.*

We begin by examining the trial court's conclusion that respondent-mother "willfully left the [j]uveniles in foster care

or placement outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstance has been made in correcting those conditions which led to the removal of the [j]uveniles."

The court may terminate parental rights upon a finding that "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat § 7B-1111(a)(2) (2009). The respondent's failure to make reasonable progress must be willful, which is established when "the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002) (citation omitted).

Here, we hold the trial court's findings of fact are supported by sufficient evidence and, in turn, support its conclusion that respondent-mother willfully failed to make reasonable progress.

The court made a finding of fact that

[respondent] completed a substance abuse assessment with the QSAP contract provider for the New Hanover County Department of Social Services. The recommendation was for

[respondent] to enter an intensive outpatient treatment program for substance abuse treatment. That the Department referred [respondent] to the intensive outpatient program at New Visions Substance Abuse Treatment in New Hanover County; [respondent] initiated treatment, however, indicated her inability to participate due to transportation issues and employment issues. There was no equivalent intensive outpatient program in her county of residence, i.e. Pender County. [Respondent] indicated her intent to enroll in the non intensive, outpatient program at Coastal Horizons Treatment Program, which is also in New Hanover County.

The trial court also found that "[respondent] tested positive for cocaine, methadone, cocaethylene, propoxyphene and benzoylecgonine, off and on from 23 October 2008 through 04 January 2010." Finally the court found that "[respondent] has never acknowledged the need for intensive outpatient substance abuse treatment, and to date, has not completed intensive outpatient treatment. She has testified that she does not have any addictive qualities which would necessitate intensive outpatient treatment for substance abuse"

The evidence at trial was clear, cogent, and convincing in support of these findings. Specifically, social worker Maureen Fisher testified that, because of respondent-mother's history of drug abuse, the petitioner requested that she submit to a substance abuse assessment. As a result of that assessment, respondent-mother was required to participate in "intensive

outpatient treatment." In spite of that requirement, respondent-mother did not pursue treatment through a program that offered intensive outpatient treatment, although such an option was available to her. Social Worker Bickel's testimony confirmed that respondent-mother was assessed and recommended to enter intensive outpatient treatment; however, she entered non-intensive outpatient treatment instead.

Furthermore, although respondent-mother had some negative drug tests, she also tested positive numerous times and failed to appear for several more tests between 2008 and 2010. In fact, at the termination hearing, respondent-mother still testified she did not have an "addictive personality" and asserted that she never had a substance abuse problem. We note that the portion of Finding of Fact 12 describing a positive test for "cocaine" appears to apply to respondent-father rather than respondent-mother; however, the remainder of that finding is accurate.

In sum, we hold that the evidence at the termination hearing supports the trial court's findings of fact documenting respondent-mother's substance abuse problem and checkered treatment history. Those findings of fact establish a willful lack of progress throughout the petitioner's involvement in this case and support the trial court's conclusion that grounds

existed to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).

Having found that one ground existed to terminate respondent-mother's parental rights, it is unnecessary to address the other ground the trial court utilized in its termination order. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) ("[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and 'an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.'"), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006) (quoting *In re Clark*, 159 N.C. App. 75, 78, 582 S.E.2d 657, 659 (2003)). Accordingly, we affirm the order terminating respondent-mother's parental rights.

Affirmed.

Judges ERVIN and THIGPEN concur.

Report per Rule 30(e).