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NO. COA11-236
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF: Durham County
Nos. 08 J 22-25
C.T., C.R., D.B., D.B.

Appeal by respondents from orders entered 19 November 2010 and 14 February 2011 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 1 August 2011.

Cathy L. Moore, Assistant County Attorney, for Durham County Department of Social Services, petitioner-appellee.

Pamela Newell, GAL Appellate Counsel, for guardian ad litem, appellee.

Staples Hughes, Appellate Defender, by Annick Lenoir-Peek, Assistant Appellate Defender, for respondent-appellant mother.

Lisa Skinner Lefler, for respondent-appellant father.

THIGPEN, Judge.

Respondent-mother and respondent-father (collectively, "respondents") are not married, but have lived together at times and are the parents of D.B. ("Donny")¹ and D.B. ("Darryl"), the

¹Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

two youngest children who are the subjects of this action. Respondent-mother has two older children, C.T. ("Charlie") and C.R. ("Carrie") (collectively, "the juveniles" or "the children"), who are also the subjects of this action. The fathers of Charlie and Carrie are not parties to this appeal. Respondents appeal from the orders terminating their parental rights. We affirm.

On 25 January 2008, the Durham County Department of Social Services ("DSS") filed a juvenile petition alleging that the juveniles were neglected, based on the children's frequent absences from school, the parents' unstable housing and employment, the parent's alleged involvement in drug dealing, and respondent-mother's failure to provide proper medical care for Carrie. Following a hearing, the trial court adjudicated the children neglected in an order entered 13 March 2008. At the time of disposition, the trial court did not remove the children from the parents' custody, but ordered both parents to comply with their respective protection plans. In an order entered 18 June 2008, the trial court placed the children in DSS custody, after finding that circumstances had not improved. The trial court ordered that respondent-mother be drug and alcohol free, comply with Family Drug Treatment Court, establish stable

housing and income, maintain stable employment, provide copies of her substance abuse evaluation and follow any recommendations for treatment, provide copies of her mental health evaluation and follow any recommendations for treatment, and attend and complete a parenting program. The trial court ordered that respondent-father be drug and alcohol free, have a substance abuse assessment and follow any recommendations for treatment, provide financial support for his children, obtain and maintain stable housing, and obtain and maintain stable employment.

On 23 December 2009, DSS filed a petition to terminate respondents' parental rights to the juveniles, alleging four grounds for termination against each respondent. Each respondent filed an answer to the petition, denying the material allegations. The trial court conducted a termination of parental rights hearing on 18 and 19 August 2010 and on 14, 15, and 16 September 2010. In an order entered 19 November 2010, the trial court found the existence of the following grounds for termination against both respondents: (1) neglect; (2) willfully leaving the juveniles in foster care for more than twelve months without showing reasonable progress to correct the conditions that led to removal; and (3) willfully failing to pay a reasonable portion of the cost of care for the juveniles. See

N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2009). At disposition, the trial court concluded that it was in the juveniles' best interest to terminate the parental rights of respondents. Respondents separately appealed from the order. However, on 24 February 2011, the trial court entered an amended order to correct a clerical error. The trial court had not intended to conclude that respondent-mother had willfully failed to pay support for the juveniles. Therefore, the trial court removed this ground against respondent-mother in the amended order. The amended order was otherwise unchanged from the original order. Respondent-mother again gave notice of appeal.

On appeal, respondent-mother challenges both the adjudicatory and dispositional stages of the proceeding. Respondent-father only challenges the adjudicatory stage of the proceeding. We address each argument in turn.

I.

Respondents first argue the trial court erred in terminating their parental rights on the basis of N.C. Gen. Stat. § 7B-1111(a)(2), willfully leaving the juveniles in foster care for over twelve months without making reasonable progress to correct the conditions which led to the removal of the juveniles. We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must find that (1) the parent willfully left the juvenile in foster care for over twelve months and (2) the parent has not made reasonable progress to correct the conditions which led to the removal of the juvenile. *In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396, *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005). It is well-established that, under N.C. Gen. Stat. § 7B-1111(a)(2), willfulness does not require a showing of fault by the parent. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996) (citation omitted).

We review the trial court's orders to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur." *Id.* at 435-36, 473 S.E.2d at 395 (citation omitted).

The following findings of fact address this ground for termination:

10. The children have been in the custody of [DSS] since May 8, 2008. The children have remained continuously in foster care up to the hearing on this date.

. . . .

14. The children were not removed from the home of the mother at the disposition

hearing on March 13, 2008, but a protection plan was ordered to require the mother to take certain actions and engage in specific services, to wit: be drug and alcohol free; provide copies of her substance abuse evaluation to counsel for the other parties and follow any recommendations for treatment; apply to, and, if accepted, participate in the Family Drug Treatment Court; provide copies of her mental health evaluation to counsel for the other parties and follow any recommendations for treatment; attend and complete a parenting program; obtain and maintain stable housing; obtain and maintain stable employment; make regular well child medical appointments and sick child medical appointments, when medical problems arise, and follow through with all appointments and prescribed treatments in a timely manner; ensure that all school age children attend school regularly; participate in all school meetings for the children; and ensure that all the children have mental health assessments and services consistent with their needs.

15. On April 1, 2008, additional dispositional requirements were added regarding the mother's actions, to wit: allow the DSS social worker access to the temporary home of the children to assess that this was a safe temporary home for the children; cooperate with the GAL so that the GAL could interview the children; do a budget with DSS to determine if DSS could assist the mother with funding and if the mother was eligible for further financial assistance.

16. On April 10, 2008, further dispositional requirements were added regarding the mother, to wit: to allow the DSS social worker and GAL access to the new home of the children; to cooperate with CSST services; and comply with Family Drug Treatment Court; and the mother shall take the children to their appointments timely.

17. At disposition on March 13, 2008, [respondent-father] was ordered to be drug and alcohol free; to have a substance abuse evaluation and follow any recommendations for treatment; provide financial support for his children; provide support and respite care for his children, and the other children when he is residing with them; obtain and maintain stable housing; and obtain and maintain stable employment. On April 10, 2008, as further disposition, [respondent-father] was ordered to provide such assistance to [respondent-mother] as possible to support her in the care and maintenance of his children.

18. On May 8, 2008, at a review, the mother's circumstances continued to be unstable and had not improved despite close monitoring, case management services, the provision of beds by DSS, and the finding of an apartment. Continuing in the home of the mother was found to be contrary to the welfare of the children All the children were removed from the mother's home and placed in the legal custody of Durham DSS for placement in foster care, unless the mother was willing to stay at the Rescue Mission Good Samaritan Inn. . . . Previous disposition orders as to the parents

remained in effect.

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21. On October 27, 2008, the Court reviewed the matters. [Respondents] were participating in some services, but [respondent-mother] had not been in compliance with Family Drug Treatment Court in July, August, and September.

22. On January 14, 2009, Durham DSS suspended the mother's visitation with the children due to her inappropriate behavior at a visitation. The mother denied that she behaved inappropriately, but complied with the suspended visitation. . . .

. . .

24. On February 10, 2009, Durham DSS suspended [respondent-father's] visitation with the children because he had an extreme angry outburst, yelling and cursing at the CSSTs supervising the visit. The children were in the room and heard the father's statements.

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27. The parents did not [] comply with Family Drug Treatment Court (FDTC). The mother had not participated since October 2008, and was officially terminated from the program on February 26, 2009. [Respondent-father] was also officially terminated from FDTC on February 26, 2009.

. . .

31. As of the May 26, 2009, hearing, [respondent-father], had completed a

mental health assessment which had no diagnostic testing or collateral [contacts], and no recommendations were made. DSS was not satisfied with the evaluator's process and requested a comprehensive psychological evaluation with collateral contacts which was ordered by the Court. [Respondent-father's] employment was sporadic. [Respondent-father's] visitation remained suspended pending completion of identified services.

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40. On August 19, 2010, [respondent-mother] was unable to produce a specimen for the drug screen. She was ordered to appear for a test within a week, which she did not do. The Court inferred that the results would have been positive.
41. [Respondent-mother] self reported that if tested on September 15, 2010, she would be positive for marijuana.
42. [Respondent-mother] has not completed substance abuse treatment and is not receiving substance abuse treatment.
43. [Respondent-mother] has not complied with the Court's dispositional and review orders by not remaining drug free, not following recommendations for substance abuse treatment as contained in her substance abuse assessment; and not complying with or completing Family Drug Treatment Court.
44. [Respondent-mother] has not consistently attended mental health treatment. She stopped attending mental health treatment at Triumph on

May 21, 2009, and did not resume treatment until November, 2009. She was scheduled to attend weekly sessions. Of the thirty-two (32) possible sessions, the mother attended eleven (11) sessions. She discontinued treatment. As of June 16, 2010, her last diagnosis was Major Depressive Disorder, Recurrent, and History of Panic Disorder without Agoraphobia, Mild/In partial remission. Some of her missed appointments were due to her hospitalizations for her heart and for her pregnancy and other medical complications.

45. [Respondent-mother] has not complied with the Court's dispositional and review orders by not complying with the recommendations for mental health treatment as contained in her mental health evaluation.

46. [Respondent-mother] continues to have no stable source of income. She has not complied with job search requirements or with the vocational rehabilitation referral. The mother has applied for disability. [Respondent-father's] father gives [respondent-mother] \$525 a month to help with the rent and other needs but will be reducing this amount. The mother also receives Foodstamps.

. . .

48. [Respondent-mother] has not complied with the Court's dispositional and review orders by failing to obtain and maintain stable employment. She reported some periods of employment in 2008, and has applied for disability due to her back issues.

. . .

49. The mother acknowledges that she still smokes cigarettes even though she has had two (2) heart operations in the last year and has been advised by her doctors to stop smoking. The mother had a mechanical valve replacement, followed by a pig valve replacement. Problems with the mechanical valve could have arisen from the mother not taking her medication as directed to. Petitioner's Exhibits 3 and 4 documents consistent dates of oxycodone refills. Because of the heart valve replacement, the mother was prescribed Wayfarin. She was not consistent in taking that, based upon the prescription refill record in Petitioner's Exhibits 3 and 4.

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52. The mother's failure to attend properly to her own medical treatment creates a risk that she would not attend to the children's medical needs if they were returned to her care. Further it demonstrates that she has not corrected a condition which led to the removal of the children.

53. The mother has not complied with the orders of the Court to allow for the placement of the children with her so that she could demonstrate her ability to ensure that all school age children attend school regularly, to keep medical appointments and have services and treatment consistent with their needs.

. . .

57. [Respondent-father] has not complied with the Court's orders to obtain and maintain stable housing.
58. [Respondent-father] testified that he obtained a second psychological evaluation but no evidence of the second psychological evaluation was presented. He has not had a second psychological evaluation as ordered. He has not obtained a substance abuse evaluation or participated in substance abuse treatment. He did not comply with or complete Family Drug Treatment Court.
59. [Respondent-father] denied that he was still using street drugs. On August 19, 2010, during the hearing, [respondent-father] refused a drug test, which the undersigned deemed an admission. [Respondent-father] then took the test, which was positive for marijuana.
60. [Respondent-father] has not complied with the Court's orders to be drug free; to have a substance abuse evaluation and follow any recommendations for treatment.

Respondent-father does not challenge any of the foregoing findings of fact. Respondent-mother challenges only finding of fact numbers 49, 52, and 53, which are related to her health. Accordingly, all of the trial court's findings of fact, with the exception of findings 49, 52, and 53, are presumed to be

supported by competent evidence and are binding on appeal. See *In re M.D.*, ___ N.C. App. ___, ___, 682 S.E.2d 780, 785 (2009).

Without specifically challenging any findings of fact, respondent-father argues that termination of his parental rights was premature because he had made some progress on his case plan. We are not persuaded. "Extremely limited progress is not reasonable progress." *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224-25 (1995). The unchallenged findings show that Respondent-father has not obtained or maintained stable housing; submitted a psychological evaluation; obtained a substance abuse evaluation or participated in substance abuse treatment; complied with or completed Family Drug Treatment Court; or stopped using street drugs. The foregoing findings are sufficient to show respondent-father did not make reasonable progress in correcting the conditions which led to the removal of the children. See, e.g., *In re Frasher*, 147 N.C. App. 513, 515-16, 555 S.E.2d 379, 381 (2001) (The respondent mother's failure to obtain and maintain steady employment or stable housing was evidence of failure to make reasonable progress); *In re Tate*, 67 N.C. App. 89, 94-95, 312 S.E.2d 535, 539 (1984) (The respondent mother's admitted "setbacks with her drinking" and frequent address changes were evidence of failure to make

reasonable progress). Thus, we conclude the trial court did not err by terminating respondent-father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Respondent-mother specifically challenges findings 49, 52, and 53, arguing there was not clear, cogent and convincing evidence that respondent-mother failed to attend to her own medical needs and therefore, could not care for the juvenile's needs. Assuming *arguendo* the record lacks evidence to support these three findings, the remaining unchallenged findings - including but not limited to findings that respondent-mother was evicted from drug treatment court; continued to test positive for illegal drugs; failed to consistently attend mental health therapy; failed to obtain and maintain stable employment; and acted inappropriately during visitation - show that respondent-mother has not made reasonable progress in correcting the conditions which led to the removal of the children and are sufficient to support the trial court's conclusion that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Apart from her challenge to findings 49, 52, and 53, respondent-mother argues that her medical issues hampered her ability to work on her case plan, that she made reasonable

progress given her condition, and that any failure to make reasonable progress was not willful. Respondent-mother specifically argues the children were removed due to respondent-mother's lack of stable housing, and she remedied this condition by obtaining stable housing in January 2010, eight months prior to the termination hearing. Indeed, we recognize that respondent-mother completed a few items in her case plan. However, the family's unstable housing was not the only condition that led to the removal of the children, and "willfulness is not precluded just because respondent has made some efforts to regain custody of the child." *Oghenekevebe*, 123 N.C. App. at 440, 473 S.E.2d at 398; *see also Nolen*, 117 N.C. App. at 699-700, 453 S.E.2d at 224-25 ("A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children[,] and "[e]xtremely limited progress is not reasonable progress"). We reiterate that the unchallenged findings show that respondent-mother was evicted from drug treatment court; continued to test positive for illegal drugs; failed to consistently attend mental health therapy; and failed to obtain and maintain stable employment. The unchallenged findings show Respondent-mother has not made reasonable progress in correcting the conditions which led to

the removal of the children and are sufficient to support the trial court's conclusion that grounds for termination of respondent-mother's parental rights existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Pursuant to N.C. Gen. Stat. § 7B-1111(a) (2009), a trial court may terminate parental rights upon a finding of one of the ten enumerated grounds. If we determine that the findings of fact support one ground for termination as to each parent, we need not review the other challenged grounds. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003). We conclude that the trial court's unchallenged findings of fact are sufficient to support termination of respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

II.

Next, respondent-mother challenges the trial court's dispositional conclusions that it was in Charlie's and Carrie's best interest to terminate respondent-mother's parental rights. Respondent-mother does not challenge the trial court's dispositional conclusions as to Donny and Darryl. Respondent-father does not challenge any of the trial court's dispositional conclusions.

After an adjudication determining that grounds exist for terminating parental rights, the trial court is required to consider six statutory factors in determining whether termination is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2009); *see, e.g., In re S.C.H.*, 199 N.C. App. 658, 666-67, 682 S.E.2d 469, 474 (2009), *aff'd per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010). We review the trial court's best interest determination for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). After reviewing the trial court's nineteen dispositional findings of fact, we conclude that it is apparent that the trial court considered all of the statutory factors.

Respondent-mother argues that there is no support for the finding that "[t]he testimony is that [Charlie] will consent," because when asked if Charlie would consent to adoption, the social worker qualified her response by stating, "I believe he would [] if he knew that he was free to do that, free to bond with someone." However, when later asked whether Charlie would consent to adoption, the social worker answered, "[y]es, I believe he would." Although the social worker's testimony is not definitive, it is sufficient to support the trial court's finding that Charlie is adoptable, has two possible placements,

and would be likely to consent to adoption. We discern no abuse of discretion in the trial court's conclusion that it was in Charlie's best interest to terminate respondent-mother's parental rights.

We also reject respondent-mother's assertion that the trial court abused its discretion in terminating respondent-mother's rights to Carrie because Carrie is not adoptable. First, we note that the trial court found Carrie to be adoptable, and this finding is supported by the social worker's testimony. The social worker testified that despite having special needs and barriers to adoption, Carrie is adoptable, is in need of consistency and stability, and has a potential kinship placement. Furthermore, a trial court is not required to find that a child is adoptable before terminating a parent's parental rights. See *In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983) ("It suffices to say that such a finding [of adoptability] is not required in order to terminate parental rights."), *cert. denied*, 310 N.C. 744, 315 S.E.2d 703-04 (1984). Accordingly, we conclude that the trial court did not abuse its discretion in determining that termination of respondent-mother's parental rights was in the best interest of Carrie.

We conclude the trial court did not err in concluding it was in the best interest of the juveniles to terminate respondents' parental rights.

AFFIRMED.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).