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NO. COA11-396
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

IN THE MATTER OF:

D.A.M.

Alleghany County
No. 08 JT 4

Appeal by Father from order entered 20 January 2011 by Judge Mitch McLean in Alleghany County District Court. Heard in the Court of Appeals 5 September 2011.

James N. Freeman, Jr., for petitioner-appellee Alleghany County Department of Social Services.

Nelson Mullins Riley & Scarborough LLP, by Stephen D. Martin and Phillip A. Harris, Jr., for guardian ad litem.

Sydney Batch, for respondent-appellant father.

STEELMAN, Judge.

Where Father intentionally evaded DSS's efforts to contact him and establish a case plan, and failed to make reasonable efforts to correct the conditions that led to the removal of the juvenile, the trial court properly concluded grounds existed to terminate his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

I. Factual and Procedural Background

On 20 November 2007, the Alleghany County Department of Social Services ("Allegheny DSS") received a report that D.A.M. was neglected. Alleghany DSS had previously investigated the family based upon reports that Mother and Father were abusing drugs, and that D.A.M. had ingested some of Father's prescription drugs. On 21 November 2007, Alleghany DSS entered into a safety plan with Mother and Father, which required them to supervise D.A.M. at all times and to not be under the influence of any medications or illegal drugs that would inhibit their ability to care for D.A.M.

On 3 December 2007, Alleghany DSS received a report that Mother was using drugs. When Alleghany DSS investigated, Mother and Father were found arguing at Father's place of employment. Mother alleged that Father had abused her, and Alleghany DSS encouraged Mother to obtain a domestic violence protective order. On 4 December 2007, the trial court entered a protective order. Mother and Father immediately fled to Virginia with D.A.M.

On 8 January 2008, the Department of Social Services in Lee County, Virginia ("Lee DSS") contacted Alleghany DSS. Lee DSS

had become involved with the family due to reports of domestic violence between Mother and Father. Lee DSS had a prior, lengthy history with Mother involving her six other children, who are not the subject of this appeal. Ultimately, Lee DSS removed D.A.M. from Mother and Father's custody and returned D.A.M. to Alleghany DSS.

On 15 January 2008, Alleghany DSS filed a petition alleging D.A.M. was neglected. On 16 January 2008, D.A.M. was placed in nonsecure custody with A.R. and S.R., friends of Mother and Father, in North Carolina. On 5 April 2008, both Mother and Father were arrested for probation violations and incarcerated in Virginia for 24 months. On 4 June 2008, D.A.M. was adjudicated dependent and neglected, during the time that Mother and Father were incarcerated.

In an order entered 10 February 2009, the trial court ceased reunification efforts with both parents and changed the permanent plan for D.A.M. to adoption. On 20 February 2009, Alleghany DSS filed a petition to terminate Mother's and Father's parental rights. On 4 December 2009, Alleghany DSS removed D.A.M. from the home of A.R. and S.R., and into a prospective adoptive home.

The termination of parental rights hearing was held on 17 September and 7 December 2010. Mother appeared at the 17 September 2010 hearing, voluntarily relinquished her parental rights to D.A.M., and is not a party to this appeal. Father did not appear at either hearing, although his attorney appeared on his behalf.

On 20 January 2011, the trial court entered an order terminating Father's parental rights. As grounds for termination, the trial court concluded: (1) the juvenile was neglected; (2) the juvenile had been removed from Father's care for more than twelve months and Father had failed to make reasonable progress; (3) Father had failed to provide support for the juvenile; and (4) Father had willfully abandoned the juvenile. The trial court also concluded it was in the juvenile's best interests to terminate Father's parental rights.

Father appeals.

II. Standard of Review

At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109(f) (2009); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001).

Review in the appellate courts is limited to determining whether clear and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

III. Grounds for Termination

In his first argument, Father contends that the trial court erred by concluding that grounds existed for termination of his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). We disagree.

N.C. Gen. Stat. § 7B-1111(a) provides that grounds exist for termination of parental rights when

[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. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2009).

In terminating parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must conduct a two-part analysis:

The trial court must determine by clear, cogent and convincing evidence that a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and, further, that as of the time of the hearing, as demonstrated by clear, cogent and convincing evidence, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child. Evidence and findings which support a determination of "reasonable progress" may parallel or differ from that which supports the determination of "willfulness" in leaving the child in placement outside the home.

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).

Willfulness under subsection (a)(2) does not require a showing of fault by the parent. *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002). "Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (citations omitted), *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). "Willfulness may be found where even though a parent has made some attempt to regain custody of the child,

the parent has failed to show 'reasonable progress or a positive response to the diligent efforts of DSS.'" *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 662 (2003) (quotation omitted).

In finding of fact eight, the trial court found the following:

On December 4, [Mother] procured a Domestic Violence Protective Order against [Father] giving her custody of [D.A.M.] and requiring [Father] to stay away from her and [D.A.M.] However, by [Mother's] own deposition testimony, [Father] "beat her home" and the two of them fled with [D.A.M.] to Lee County, Virginia, to avoid further DSS and law enforcement scrutiny.

[Father, Mother, and D.A.M.] were discovered in a motel in Lee County by the Lee County, Virginia, DSS on January 8, 2008. [Mother was impaired on opiates and claimed she was forced to be there by [Father] who had threatened to kill her and her family. Lee County DSS took [D.A.M.] into their custody and after a telephone conference between a Lee County Judge and Judge McLean of Alleghany County it was determined that North Carolina was the proper jurisdiction in this matter and [S.R.] went to pick up [D.A.M.] who was then placed in her custody by the Court. The original Non-Secure Order was entered on January 9, 2008 and the first Seven Day Hearing was held on January 15, 2008 at which neither parent appeared. [Father] refused to provide any contact information [to Alleghany DSS]. Some time [sic] in January both parents went to Indiana and while [Mother] visited [D.A.M.] in North

Carolina, [Father] never returned. He was arrested in April, 2008 for probation violation and was incarcerated until May, 2010. . . .

[D.A.M.] was only 16 months old when he was removed from his father's custody. He is now four years and three months old and he has never returned to his father's presence although he did visit his father in prison on one occasion. [Father] is a complete stranger to [D.A.M.] as a result of [Father's] own actions. Since his imprisonment [Father] has had only minimal contacts with [D.A.M.] in the form of a handful of letters and the visit referred to hereinabove. His financial support has consisted of \$25 over the last three years. [Father] has never contacted DSS to inquire about his son from the time he was imprisoned in 2008. Most telling to the Court is that [Father] failed to appear at either the September 17 or December 7, 2010 hearings to defend his parental rights.

The history of this case is replete with evidence of [Father's] temper, anger management problems and a complete inability to comply with the law and the rules of society. He admits to a history of drug addiction and even fighting with [Mother] over drugs in [D.A.M.'s] presence. He fled the jurisdiction of North Carolina when it was clear that Alleghany DSS was going to thoroughly investigate his home situation and his neglect and abuse of his child and the child's mother. He described himself as "flipping out" when he loses his temper. He has been convicted of possession of drugs, resisting arrest, forgery, possession of drugs with intent to sell or deliver, larceny, arson and communicating threats. Even while imprisoned he was disciplined on three different occasions for failing to

follow correctional facility rules.

Although Father makes the general assertion in his brief that finding of fact eight is "not based on competent evidence," he fails to explain what portions of the finding are unsupported or how the evidence is insufficient to support the finding. We hold that Father has failed to properly challenge the evidence supporting this finding, and thus this finding of fact is binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Even assuming *arguendo* that Father had properly challenged finding of fact eight, the portions of the finding cited above are supported by clear and convincing evidence.

It is undisputed that D.A.M. has been in foster care since January 2008, well beyond the twelve-month time period required by the statute. Further, the trial court's findings establish Father's willful failure to make reasonable progress in correcting those conditions which led to the removal of D.A.M. In the 4 June 2008 disposition order, the trial court ordered Father to comply with Alleghany DSS in all aspects of the Family Services Case Plan. The trial court's findings demonstrate, however, that Father's absolute refusal to cooperate prevented Alleghany DSS from even establishing a case plan. Father fled

North Carolina to evade a domestic violence protective order and the investigation of Alleghany DSS. Once Father left North Carolina, he refused to provide Alleghany DSS with his contact information and never contacted the agency to inquire about D.A.M.

In addition, after Father was released from prison, he failed to appear at numerous hearings in this matter. Father demonstrated his continued inability to control his anger, in spite of his claims he made some efforts toward self-improvement while he was incarcerated. Father was also unable to avoid disciplinary action while imprisoned.

Given Father's extensive efforts to evade any interaction with Alleghany DSS, his failure to re-engage with Alleghany DSS after his release from prison, and his demonstrated lack of progress, he cannot now blame the lack of a case plan or his failure to make reasonable progress on Alleghany DSS. The trial court properly concluded that grounds existed to terminate Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Because of our holding set forth above, it is unnecessary to address Father's remaining arguments regarding other grounds for termination. See *In re Humphrey*, 156 N.C. App. 533, 540,

577 S.E.2d 421, 426 (2003) (a finding of one statutory ground is sufficient to support the termination of parental rights). Father failed to challenge the trial court's conclusion that it was in the best interests of D.A.M. to terminate his parental rights.

The trial court's order terminating Father's parental rights is affirmed.

AFFIRMED.

Chief Judge MARTIN and Judge MCCULLOUGH concur.

Report per Rule 30(e).