NO. COA11-587
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

IN THE MATTER OF:

M.M.F.
A Minor Juvenile

Sampson County
No. 09 JA 34

Appeal by respondent-mother from judgment entered 23 March 2011 by Judge Carol A. Jones Wilson in Sampson County District Court. Heard in the Court of Appeals 31 October 2011.

Frank L. Bradshaw for Sampson County Department of Social Services petitioner-appellee.

Smith Moore Leatherwood, LLP, by Carrie A. Hanger, for Guardian ad Litem appellee.

Mercedes O. Chut for respondent-mother appellant.

McCULLOUGH, Judge.

Respondent-mother appeals from a judgment terminating her parental rights to her daughter, M.M.F. ("Mary")[1]. We affirm.

Respondent-mother and C.H. are the parents of Mary, born 5 September 2008, and two older children. On 19 March 2009, the Sampson County Department of Social Services ("DSS") filed a

[1] A pseudonym is used to protect the identity of the juvenile.

juvenile petition alleging that Mary was a neglected and dependent juvenile. DSS filed the petition at the request of a district court judge who had conducted a hearing earlier that day on respondent-mother's *ex parte* motion for temporary custody of Mary. DSS supported its juvenile petition with a copy of a January 2009 Harnett County juvenile order that was received into evidence by the district court judge at the temporary custody hearing. In the Harnett County order, the trial court found respondent-mother and C.H. to be unfit and to have acted inconsistent with their parental rights, found domestic violence and untreated mental health issues, and placed Mary's two older siblings in the custody of a relative.

DSS took nonsecure custody of Mary on 19 March 2009. Four days later, respondent-mother entered into an out-of-home service agreement in which she was required to complete parenting classes, complete domestic violence counseling, complete mental health therapy, and obtain stable housing.

After conducting a hearing on the juvenile petition, the trial court adjudicated Mary a neglected and dependent juvenile. The trial court held periodic review hearings, and on 18 February 2009, the trial court held a permanency planning

hearing. By order filed 30 March 2010, the trial court changed the permanent plan from reunification to adoption.

On 8 June 2010, DSS filed a motion to terminate respondent-mother's parental rights alleging that grounds existed to terminate her rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2009) (neglect); N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress); and N.C. Gen. Stat. § 7B-1111(a)(6) (incapable of providing care and supervision). After several continuances, the trial court conducted a hearing on 17 February 2011. The trial court concluded that grounds existed to terminate the parental rights of respondent-mother under N.C. Gen. Stat. § 7B-1111(a)(2),(6). The trial court further concluded that it was in the best interest of Mary to terminate respondent-mother's parental rights. Respondent-mother appeals.

On appeal, respondent-mother contends: (1) the trial court erred in not appointing her a guardian *ad litem*, (2) several of the trial court's findings of fact are not supported by the evidence, and (3) the trial court erred in concluding that grounds existed to terminate her parental rights. Preliminarily, we note that although the trial court concluded that grounds existed pursuant to sections 7B-1111(a)(2),(6), we find it dispositive that the evidence is sufficient to support

termination of respondent-mother's parental rights under section 7B-1111(a)(2). *See In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (a finding of one statutory ground is sufficient to support the termination of parental rights).

I. Standard of Review

> "The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (citation omitted).

II. Guardian *ad litem*

Respondent-mother first contends the trial court abused its discretion by not appointing her a guardian *ad litem*. Appointment of a guardian *ad litem* for parents is governed by N.C. Gen. Stat. § 7B-1101.1(c) (2009), which provides:

> On motion of any party or on the court's own motion, the court *may* appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17, if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad

litem.

Id. (emphasis added). "A trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005) (citing *Rutledge v. Rutledge*, 10 N.C. App. 427, 432, 179 S.E.2d 163, 166 (1971)). "'Whether the circumstances . . . are sufficient to raise a substantial question as to the party's competency is a matter to be initially determined in the sound discretion of the trial judge.'" *Id.* (quoting *Rutledge*, 10 N.C. App. at 432, 179 S.E.2d at 166).

Here, respondent-mother did not request appointment of a guardian *ad litem*. Although the motion to terminate parental rights alleges respondent-mother was incapable of providing for the proper care and supervision of Mary, the petition does not allege that the incapability was due to some mental defect, mental illness, or lack of understanding. Further, nothing in the motion suggests that respondent-mother is, in the words of N.C. Gen. Stat. § 7B-1101.1(c), "incompetent or has diminished capacity and cannot adequately act in his or her own interest."

Finally, respondent-mother's conduct at the hearing did not raise a question about her competency as respondent-mother testified on her own behalf and asserted her own interest in retaining her parental rights to Mary. Accordingly, we conclude the trial court did not abuse its discretion by failing to appoint a guardian *ad litem* for respondent-mother.

III. Findings of Fact

Respondent-mother next challenges several findings of fact. We only address challenged findings 15 through 17, 35 through 38, and 40, which we find necessary to support the trial court's conclusion that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2). We note that respondent-mother also challenges findings 19, 20, 42, and 43; however, we need not address the additional arguments regarding the other findings of fact because they are unnecessary to support its ultimate conclusions, and any error in them would not constitute reversible error. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

The first set of challenged findings of fact pertain to respondent-mother's therapy with licensed counselor Deborah James (James):

> 35. That the Respondent Mother introduced into evidence a mental health

assessment conducted by Deborah James of Assisted Care Health and Home Care Specialists dated July 26, 2010 (hereinafter referred to as the "New Evaluation").

36. That the New Evaluation indicated that the Respondent Mother suffers from bipolar disorder, post traumatic stress disorder, and borderline personality disorder.

37. That the New Evaluation also indicated that the Respondent Mother had a pattern of disturbance in interpersonal relationships, emotional instability, reactivity, and aggression. The New Evaluation also indicated that she has poor insight into the etiology of her problems and her role in relationships.

38. That the New Evaluation further indicated that the Respondent Mother suffers from sleep disturbance, poor appetite, anger, irritability, agitation, aggression, poor trust, low threshold for tolerance, poor memory, poor concentration, blames others, anxiety, racing thoughts, and avoidance.

Respondent-mother does not contend that these findings are not supported by clear, cogent, and convincing evidence. Rather, she contends the trial court "mischaracterizes Deborah James' treatment plan with [respondent-mother] as a psychological evaluation, dubbed, 'New Evaluation.'" Finding of Fact No. 35, however, clearly states that "Respondent Mother introduced into evidence a *mental health assessment* conducted by

Deborah James[.]" (Emphasis added.) The trial court merely labeled James' assessment as "New Evaluation" to be consistent with the label given to respondent-mother's 2007 psychological evaluation, which the trial court labeled "Mother's Evaluation." Respondent-mother's argument is without merit.

The second set of challenged findings of fact pertain to respondent-mother's out-of-home service agreement:

> 15. That the Respondent Mother only completed her parenting classes.
>
> 16. That the Respondent Mother failed to complete domestic violence counseling and failed to complete mental health therapy.
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> 17. That the Respondent Mother has also failed to obtain stable housing having resided in four locations within Sampson County and six locations within Bladen County since the Juvenile was born.
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> . . . .
>
> 40. That as of today's date, the Respondent Mother has failed to complete her out of home services agreement with DSS.

Respondent-mother argues that the trial court's findings ignore testimony that at the time of the termination hearing, she had been participating in therapy with James and had been living with her youngest son's paternal grandparents since February 2010.

Respondent-mother asserts that this testimony shows that she met the requirements of stable housing and mental health therapy, thereby negating the findings that she "only completed parenting classes" and she "failed to complete her service agreement." We disagree and conclude the trial court's findings of fact are supported by testimony from DSS social worker Barbara King ("King") and respondent-mother, and documents received into evidence at the hearing.

As to respondent-mother's counseling and class requirements, King testified that DSS had referred respondent-mother to Residential and Supportive Services ("RASS") for services; that respondent-mother had not completed domestic violence classes or mental health therapy; and that "[t]he only thing that she completed all together [sic] was parenting classes." Specifically, King testified that respondent-mother did not complete the twenty-six week domestic violence and anger management therapy at "U-Care" nor did she complete mental health therapy with Linda Newsome. In addition, the executive director of RASS informed DSS in a letter dated 6 January 2010 that respondent-mother had attended three out of ten Behavioral Management Counseling sessions. Further, therapist Dwight

Dunning informed DSS that respondent-mother had failed to attend therapy sessions.

Contrary to respondent-mother's argument, the trial court did not ignore respondent-mother's evidence that she was participating in therapy with James. In fact, the trial court made findings of fact concerning respondent-mother's therapy with James in Finding of Fact Nos. 35 through 39. More importantly, however, the evidence shows that respondent-mother was participating in therapy with James at the time of the hearing, not that she had completed mental health treatment which was required by the out-of-home service agreement.

With respect to respondent-mother's housing requirement, King testified that respondent-mother had moved about seven times since March 2009, when Mary was removed from respondent-mother's custody. Respondent-mother admitted that she moved seven times since DSS's involvement in her case. Respondent-mother also testified that she had been living with the paternal grandparents of her youngest son since February 2010 and was seeking Section 8 housing. The paternal grandfather testified that respondent-mother has a bedroom in his three-bedroom trailer and "she can stay as long as she likes." The trial court took into account respondent-mother's living arrangements with

the grandparents when it found, in unchallenged Finding of Fact No. 18, that "Respondent Mother currently resides in the home of friends who have provided her the home and who also assist her financially."

Because the evidence shows that respondent-mother did not complete domestic violence counseling, did not complete mental health therapy, and did not obtain stable housing, the trial court properly found in Finding of Fact No. 40 that respondent-mother failed to complete her out-of-home services agreement at the time of the termination hearing. Respondent-mother's argument that Findings of Fact 15, 16, 17 and 40 are unsupported by the evidence is without merit. Accordingly, we conclude the trial court's challenged findings of fact are supported by clear, cogent, and convincing evidence.

IV. Grounds for Termination

Respondent-mother also contends the trial court's findings of fact do not support the conclusion that she willfully failed to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2). Respondent-mother asserts that because she made progress "early on in the case" and completed parenting classes, the trial court erred in concluding that respondent-mother willfully failed to make reasonable progress.

Under section 7B-1111(a)(2) of the North Carolina General Statutes, a court may terminate parental rights on the ground "[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). The willful leaving of the child is "something less than willful abandonment" and "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) (citations omitted). A finding of this ground may be made when the parent has made some attempt to regain custody of the child but has failed to show reasonable and positive progress. *In re Nolen*, 117 N.C. App. 693, 699-700, 453 S.E.2d 220, 224-25 (1995). A finding of willfulness is not precluded even if the respondent has made some efforts to retain custody of the children. *Id.*

Mary was removed from respondent-mother's custody due to allegations of domestic violence issues, untreated mental health issues, and respondent-mother's acting inconsistent with her parental duties such that her two older children were placed with a relative. In addition to the challenged findings, the

trial court also made the following unchallenged findings to support its conclusion that respondent-mother failed to make reasonable progress:

> 18. That the Respondent Mother currently resides at the home of friends who have provided her the home and who also assist her financially.
>
> . . . .
>
> 21. That the Respondent Mother was involved in a domestic violence incident as late as October 2010.
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> 22. That the Respondent Mother applied to Residential and Supportive Services (hereinafter referred to as "RASS") on or about July 15, 2009, to fulfill her out of home services agreement with DSS.
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> 23. That the Respondent Mother was referred by RASS to receive parenting classes, stress management, anger management, domestic violence sessions, substance abuse counseling, and a psychological evaluation.
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> 24. That a mental health assessment was performed on the Respondent Mother by RASS on or about July 28, 2009, and from said assessment it was recommended that the Respondent Mother receive community support services, outpatient therapy, outpatient behavioral management counseling which includes parenting and anger management, psychiatric medication management, and possible future psychological testing to rule [out] bipolar disorder.
>
> 25. That the Respondent Mother only attended three out of 10 behavioral management counseling sessions with RASS and RASS

> indicates that during these three sessions it became clear that the Respondent Mother was attending only because of her out of home service agreement with DSS.
>
> 26. That the Respondent Mother only attended three out of eight individual therapy sessions with RASS.

Here, the trial court's challenged and unchallenged findings of fact show that as of the date of the termination hearing, respondent-mother did not, as her out-of-home service agreement required, complete domestic violence counseling, complete mental health therapy, and obtain stable housing.

Further, contrary to respondent-mother's assertion, the trial court was not required to make findings that her failure to make progress was willful "in light of [her] undisputed mental limitations." Respondent-mother cites to *In re J.G.B*, 177 N.C. App. 375, 628 S.E.2d 450 (2006) and *In re Matherly*, 149 N.C. App. 452, 562 S.E.2d 15 (2002) to support her assertion. However, these cases deal with age-related limitations and are inapplicable here. *See Matherly*, 149 N.C. App. at 455, 562 S.E.2d at 18 (court "must make specific findings of fact showing that a minor parent's age-related limitations as to willfulness have been adequately considered"). By failing to take steps to become responsible so as to be able to remove Mary from foster care, respondent-mother clearly fulfilled the willfulness

requirement of N.C. Gen. Stat. § 7B-1111(a)(2). We hold that the trial court's findings of fact provide ample support for the trial court's conclusion of law that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2) supporting termination of respondent-mother's parental rights.

Accordingly, we affirm the trial court's order terminating respondent-mother's parental rights.

Affirmed.

Judges HUNTER (Robert C.) and THIGPEN concur.

Report per Rule 30(e).