

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1174

Filed: 19 July 2016

Buncombe County, No. 13 JT 396

IN THE MATTER OF: S.L.C.

Appeal by respondent-mother from judgment entered 13 July 2015 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 20 June 2016.

*Hanna Frost Honeycutt, for petitioner-appellee Buncombe County Department of Social Services.*

*Edward Eldred, for respondent-appellant mother.*

*Amanda Armstrong, for guardian ad litem.*

CALABRIA, Judge.

Respondent K.D.C. (“mother”) appeals from a judgment terminating her parental rights to her minor child, S.L.C. (“Sarah”).<sup>1</sup> Because the trial court’s conclusion to terminate mother’s parental rights based on her failure to correct the conditions that led to Sarah’s removal from her care is supported by its findings of fact, we affirm.

---

<sup>1</sup> The pseudonym “Sarah” is used throughout for ease of reading and to protect the juvenile’s privacy.

*Opinion of the Court*

The Buncombe County Department of Social Services (“DSS”) became involved with mother and Sarah in December 2013. Mother and Sarah were traveling with mother’s boyfriend in a car that had been stopped by police officers investigating an assault allegedly committed by the boyfriend. The officers learned that both mother and her boyfriend had outstanding warrants, and placed them under arrest. A DSS social worker arrived to take custody of Sarah, who was ten months old at the time. At the time of their arrests, mother and her boyfriend appeared to have track marks on their arms, and drug paraphernalia, including syringes and a burnt spoon, was found in the car.

On 6 December 2013, DSS obtained non-secure custody of Sarah after filing a juvenile petition alleging she was a neglected and dependent juvenile. At a hearing on 26 February 2014, mother stipulated to the allegations in the juvenile petition, and the trial court subsequently entered an order adjudicating Sarah to be a neglected and dependent juvenile. The court continued custody of Sarah with DSS and granted mother weekly supervised visitation with Sarah. The court adopted a case plan for mother and ordered her to follow all recommendations from her comprehensive clinical assessment, submit to random drug screens including a hair follicle test, complete substance abuse treatment, complete parenting classes and demonstrate learned skills, maintain employment, and maintain housing appropriate for Sarah.

*Opinion of the Court*

The trial court held a permanency planning and review hearing in this matter on 1 May 2014. In its order from that hearing, the trial court set the permanent plan for Sarah as reunification with mother and directed DSS to continue working with mother to eliminate the need for Sarah's out-of-home placement. After a second permanency planning and review hearing held 22 August 2014, the court continued the permanent plan as reunification after concluding that the conditions that led to the removal of Sarah from mother's custody continued to exist. By order entered 13 February 2015, however, the court found mother had "demonstrated a consistent pattern of appearing to engage in services and then dropping off." The court changed Sarah's permanent plan to adoption and relieved DSS of making further reunification efforts with mother.

DSS filed a petition to terminate mother's parental rights on 19 February 2015, alleging grounds of neglect and failure to make reasonable progress in correcting the conditions that led Sarah's removal. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2) (2015). After a hearing on 29 May 2015, the trial court entered a judgment terminating mother's parental rights to Sarah on the grounds alleged in the petition. Mother appeals.

Mother now argues several of the trial court's findings of fact are not supported by clear, cogent, and convincing evidence and that the court's findings do not support its conclusion that grounds exist to terminate her parental rights. We disagree.

This Court reviews orders terminating parental rights to determine “whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (citations and quotation marks omitted). The trial court’s findings of fact that an appellant does not specifically dispute on appeal “are deemed to be supported by sufficient evidence and are binding on appeal.” *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). However, “[t]he trial court’s conclusions of law are fully reviewable *de novo* by the appellate court.” *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (quotation marks omitted). A “‘valid finding on one statutorily enumerated ground is sufficient to support an order terminating parental rights.’” *In re Greene*, 152 N.C. App. 410, 416, 568 S.E.2d 634, 638 (2002) (citation omitted).

We first address mother’s challenges to several of the trial court’s findings of fact. Mother challenges findings of fact 11, 15, 18, 27 and 28. We address each argument in turn.

In finding of fact 11, the court found:

11. On February 26, 2014, [Sarah] was adjudicated a neglected and dependent juvenile. The following conditions contributed to the adjudication of neglect and dependency: . . . [M]other’s incarceration for criminal activity; . . . mother’s substance abuse; and Respondent father’s abandonment of the minor child.

*Opinion of the Court*

Mother argues that the trial court erred in finding that her substance abuse was a condition that led to Sarah's neglect and dependency adjudication. It is clear, however, that potential substance abuse was identified as a factor in the initial juvenile petition, wherein DSS alleged concerns about track marks on mother's arms, drug paraphernalia found in the car, and mother's admitted intravenous use of Percocet. Mother stipulated to the truth of these allegations, and the trial court found them as fact when it entered its initial adjudication order. The court took judicial notice of the underlying juvenile file and thus the initial juvenile petition and adjudication order were before the court at the termination hearing. This finding of fact is thus supported by clear, cogent, and convincing evidence.

In finding of fact 15, the court found:

15. [DSS] requested that . . . mother submit to a hair follicle test. . . . [M]other failed to submit for several months. By the time she did submit to a hair follicle test several months later, the hair follicle test was negative for controlled substances.

Mother challenges this finding solely on the basis that the trial court did not order her to submit to a hair follicle test until 26 February 2014, which is irrelevant to the finding of fact. Mother concedes that the finding is "technically" supported by the evidence. We agree and overrule this argument.

Finding of fact 18 states that mother "has failed to consistently visit with [Sarah] while [she] has been in foster care." Mother's challenge to this finding is

merely that her failure to consistently visit with Sarah did not begin until June 2014. This hollow argument concedes that mother did not consistently visit with Sarah and mother admitted at the hearing that she did not consistently visit with Sarah. This argument is overruled.

In finding of fact 27, the court found:

27. . . . [M]other has failed to complete recommended and court ordered substance abuse treatment in spite of the assistance of the Department. She has continued to test positive for controlled substances. . . . [M]other has failed to correct the substance abuse issues which led to the involvement of the Department.

Mother challenges this finding on two grounds: (1) the finding is irrelevant to the court's conclusions because substance abuse issues did not lead to DSS's involvement in the case; and (2) because her initial drug tests were negative, the court erred in finding that she "continued" to test positive for controlled substances. As discussed in mother's challenge to finding of fact 11, mother's substance abuse issues were a concern throughout the underlying juvenile case and her efforts to address those issues were properly considered by the trial court.

Mother's argument regarding the court's finding that she "continued" to test positive for controlled substances is equally unavailing. At the hearing, mother testified that she had missed numerous requested drug screens; tested positive for cocaine, opiates, and marijuana while Sarah was in foster care; and had used opiates at least three times in the prior six months, but that her "main" substance use over

the prior six months had been marijuana. Testimony from mother and the social worker further established that mother's positive drug screens occurred on 3 July 2014 (cocaine) and 9 February 2015 (opiates and marijuana). Accordingly, although some of mother's drug screens were negative for controlled substances, it is clear that mother continued to use controlled substances over the course of this case, and we overrule this argument.

Finally, in finding of fact 28, the court found that mother had "failed to obtain and maintain employment or stable housing suitable for [Sarah]." Mother argues this finding is unsupported as to the suitability of her housing because the social worker testified she had never been to the house. Mother ignores, however, her own admissions that her house was unsuitable for her to live in on a full-time basis because of the extensive renovations she and her father were making to the house. Moreover, mother did not live at that house for "six months to a year" and it was not known where she was staying during that time. The social worker testified that her decision to not evaluate the house for its suitability for [Sarah] was due to mother's admissions that the house was not yet suitable and because mother did not reside at the house on a full-time basis. Mother's argument is overruled.

We next address mother's argument that the trial court erred in concluding that grounds exist to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). A trial court may terminate parental rights where:

*Opinion of the Court*

The 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) (2015). Willfulness under section 7B-1111(a)(2) may be proven by showing “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 (2001).

Here, substance abuse concerns were a primary reason Sarah was removed from mother’s care, and the trial court’s findings of fact establish that mother utterly failed to address her substance abuse issues during the nineteen months that Sarah had been in foster care. While Sarah was in foster care, mother: lost her employment because she used a controlled substance while at work and she failed to maintain employment since that time; was charged with crimes related to controlled substances; and failed to complete the recommended and court ordered substance abuse treatment despite the assistance DSS offered. Additionally, although ordered by the court to timely submit to drug screens requested by DSS, mother refused to take several requested drug tests, and admitted at the hearing to her continued use of controlled substances. Mother also failed to consistently visit with Sarah, missed



a significant number of Family Team meetings, and did not maintain employment or stable housing suitable to meet Sarah's basic needs. Mother demonstrated an ability to make progress toward correcting her substance abuse problems when she willingly submitted to two comprehensive clinical assessments and began intensive outpatient treatment. Nonetheless, mother's failure to follow through with the treatment, continued drug use over the course of the juvenile case, and failure to actively participate in her case plan, establish that she was unwilling to make reasonable progress under the circumstances toward correcting her substance abuse problems.

We hold these facts support the trial court's conclusion that grounds exist to terminate mother's parental rights to Sarah pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). *See In re A.R.H.B.*, 186 N.C. App. 211, 222, 651 S.E.2d 247, 255 (2007) (holding findings that while the children were in foster care, the mother failed to complete the substance abuse treatment program, tested positive for drugs, never successfully completed parenting classes, and failed to maintain any permanent and stable employment were sufficient to support termination of parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2)). Because the trial court did not err in terminating mother's parental rights on this ground, we need not address her arguments regarding the ground of neglect. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005). Mother does not challenge the trial court's conclusion that termination of her parental rights is in Sarah's best interests, and we affirm the court's judgment.

IN RE: S.L.C.

*Opinion of the Court*

AFFIRMED.

Judges DILLON and INMAN concur.

Report per Rule 30(e).