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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-15

Filed 15 August 2023

Forsyth County, Nos. 19 JT 208-210

IN THE MATTER OF: D.A., B.A., C.A.

Appeal by Respondent from an order entered 4 October 2022 by Judge Thomas W. Davis, V in Forsyth County District Court. Heard in the Court of Appeals 18 July 2023.

*Anné C. Wright, for Respondent-Father.*

*Assistant County Attorney Melissa Starr Livesay, for Forsyth County Department of Social Services.*

*GAL Appellate Advocacy Clinic, by Director Alan D. Woodlief, Jr., for Guardian ad Litem.*

WOOD, Judge.

Respondent Father (“Father”) appeals an order terminating his parental rights to his three children, Dylan, Blake, and Charlotte<sup>1</sup> due to his willful failure to correct

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<sup>1</sup> We refer to the juveniles by the parties’ stipulated pseudonyms.

the conditions which led to the removal of his children from the home on the basis of neglect. After careful review of the record and applicable law, we affirm the trial court's termination order.

### **I. Factual and Procedural Background**

On 7 November 2019, the Forsyth County Department of Social Services ("DSS") filed juvenile petitions alleging neglect of three minor children: Charlotte, three years old; Blake, one year old; and Dylan, seven days old after two reports DSS received and investigated on 29 August 2019 and 1 November 2019.

The 29 August 2019 report alleged Father and Mother<sup>2</sup> were using drugs, including methamphetamine, in front of the three children, selling illegal substances such as methamphetamine and cocaine from the family home, engaging in domestic violence in front of their children, and failing to provide proper prenatal care for Mother, who was pregnant with Dylan, and weighed ninety pounds.

The DSS petition further alleged that the children were left without adult supervision allowing incidents such as Blake falling on top of the coffee table and hitting his head and falling down the stairs to occur. It was also alleged Blake had been left in his playpen in the bathroom for nine or ten hours at a time. The petition alleged the children were very thin and small for their ages and were not bathed nor

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<sup>2</sup> Mother did not appeal the trial court's termination order and thus, is not a party to this appeal. Therefore, we only address Father's case plan and his progress towards reunification, and do not address Mother's case plan nor her progress.

their diapers and clothes changed regularly.

Additionally, the report alleged certain acts of violence. For example, Charlotte was alleged to have had a healing burn mark on her face. Prior to DSS's investigation of the home, Father was alleged to have physically assaulted Mother, and during one such encounter one of the minor children grabbed a rifle and threatened to shoot Father, resulting in Father leaving the home. During DSS's investigations of these incidents, the parents admitted to "ongoing domestic violence," and Father admitted to recent use of methamphetamines and marijuana. During the investigation, a social worker observed Father slurring his words, repeating himself, and appearing to be under the influence of an impairing substance during an interview. The DSS worker also observed Father attempt to feed his one-year-old son Blake old food and uncooked food.

On 30 August 2019, DSS provided in-home services to the parents by giving them information on rent assistance and food stamps. Additionally, DSS requested both parents to complete substance abuse and mental health assessments, follow the recommendations from each, find suitable housing, and participate in parenting and domestic violence classes.

On 1 November 2019, DSS returned to the home after receiving a report that Mother had given birth to Dylan in the home. Mother and Dylan were taken to a hospital where Mother tested positive for marijuana, benzodiazepines, amphetamines, and opiates; Dylan tested positive for benzodiazepines and

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amphetamines. During this hospitalization, a social worker observed the parents leave the hospital room. When Mother returned to the room, she slurred her speech, was unable to keep her eyes open, and was unable to sit up straight. Additionally, a hospital employee discovered Dylan's face had been covered by a blanket shortly after Mother and Father's visit. Consequently, visits by Mother and Father were supervised by a security guard placed in Dylan's hospital room. On 3 November 2019, Mother was discharged from the hospital, but Dylan remained hospitalized due to going through withdrawals "from the drugs that were present in his system at his birth, and feeding issues." According to the report DSS received, Mother and Father agreed to place the remaining children with a maternal aunt "due to their untreated substance abuse and domestic violence issues," but the aunt could no longer provide care and supervision for the children. On 8 November 2019, as part of DSS's in-home services, Father completed an initial substance abuse assessment at Daymark, but did not comply with recommended services.

On 15 November 2019, the trial court determined despite efforts made by DSS to avoid removing the children from the home, Father and Mother had not complied with DSS referrals for domestic violence or substance abuse treatment. DSS was granted nonsecure custody and removed the children from the home. The children were placed with a paternal aunt and uncle. Shortly afterwards, on 22 November 2019, the minor children were placed with a licensed foster family.

Following the 29 January 2020 adjudication hearing, and by order entered 17

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April 2020, the trial court adjudicated Dylan, Blake, and Charlotte as neglected juveniles pursuant to N.C. Gen. Stat. § 7B-101(15). The court ordered Mother and Father to comply with their DSS case plans should they wish to reunify with the children. In order to achieve reunification, the trial court required Father to complete “a parenting capacity and psychological evaluation and follow all provider recommendations”; complete “a substance abuse assessment and follow all provider recommendations”; complete “a domestic violence assessment and follow provider recommendations”; refrain from the use of illicit drugs; submit to “random drug screens at the request of [DSS]”; “[d]emonstrate the ability to meet the basic[] educational, developmental, and medical needs of his children, including attending medical appointments”; “[p]articipate in [DSS] meetings and hearings in reference to the case”; “[m]aintain appropriate housing and financial stability”; and “[s]ign releases to allow [DSS] and the GAL to monitor treatment progress.” At the time of the adjudication hearing, Father had completed the substance abuse assessment but remained unemployed.

At the 29 July 2020 review hearing, the trial court found Father had not complied with his case plan. Specifically, the trial court found Father did not comply with the previously recommended substance abuse treatment from the 8 November 2019 Daymark assessment; did not complete a psychological evaluation and parenting capacity evaluation, despite DSS making several efforts to contact Father to schedule an appointment; did not complete a domestic violence assessment; did not

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submit to a drug screen requested 15 July 2020; did not participate in meetings with DSS; was homeless and living with a family friend; and had not signed a release of information to allow DSS and the GAL to monitor his progress in treatment. The trial court also found that, in the three months since the last review hearing, Father had twenty-nine opportunities to visit with his children virtually but had visited seven times, rarely participated, or stayed for the entire visit, and did not participate in the one face-to-face opportunity DSS provided. Additionally, Father had new criminal charges pending for possession of methamphetamine and drug paraphernalia. The trial court ordered Father to stay sober, submit to random drug screenings, and follow his reunification plan.

On 20 November 2020, a review hearing began and carried over to 20 January 2021; however, Father was incarcerated and unable to attend. The trial court found Father remained homeless, had not completed the parenting capacity and psychological evaluations or the domestic violence assessments, had completed a substance abuse assessment through Daymark Recovery Services on 20 December 2019 but had not participated in substance abuse treatment or submitted to drug screens on 15 July, 20 August, and 17 September 2020. The trial court ordered the primary permanency plan to be changed to adoption.

On 23 April 2021, the trial court held another permanency planning hearing where the trial court found Father completed an initial appointment for parenting capacity and psychological evaluation on 25 August 2020, but had not returned to

complete the written portion of the assessment. The trial court found Father had not participated in substance abuse treatment despite the recommendation to participate in intensive outpatient substance abuse treatment and individual therapy. Father had additional criminal charges pending for misdemeanor possession of drug paraphernalia, maintaining a dwelling, two charges for possession of stolen goods, shoplifting, and felony possession of a stolen vehicle. The trial court found Father was not paying child support, was not making significant progress towards reunification, and had not demonstrated the ability to meet his children's basic needs. The trial court ordered Father to comply with his case plan if he desired to reunify with his children.

On 15 October 2021, DSS filed a motion for termination of parental rights. On 5 December 2021, Mother and Father had another child, Emily.<sup>3</sup> Subsequently, in March 2021, Emily was abandoned by both parents at her paternal grandparent's home, who eventually reported the abandonment to DSS and shortly thereafter, surrendered her to the custody of Wilkes County DSS. Emily was then placed in the same foster home as her three siblings.

On 5 August 2022, the trial court held the termination of parental rights hearing. At the hearing, Father testified he had participated in some of the services recommended by Wilkes County DSS regarding reunification with Emily. He also

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<sup>3</sup> We refer to the juvenile by the parties' stipulated pseudonym. Father's parental rights to Emily are not the subject of this appeal.

presented evidence he had been employed part-time for more than a year, had made child support payments, and was living with his parents. However, he also admitted he was in a worse position at that time than he was when the children were removed three years earlier.

When questioned about domestic violence and instances of violence occurring in front of the children, Father testified that “[i]t wasn’t bad” and “things got out of hand.” Father also testified that he knew Mother had been using drugs while taking care of the children and during pregnancies but that he intervened by telling her “not [to] do that.”

The trial court heard evidence that Father had completed his psychological assessment for Wilkes County DSS on 15 April 2022 resulting in a diagnosis of paranoid personality disorder and borderline intelligence. The evaluator further determined it would be in the best interest of the children to remain in DSS custody and noted “concerns that [Father’s] mental capacity, motivation, and logical thinking” would hinder his ability to “safely and adequately care for one child, much less four young children.”

The trial court heard evidence that Father completed parenting classes in Wilkes County on 16 May 2022 but never signed a release form authorization for DSS to obtain his records. Additionally, Father’s substance abuse treatment records from Wilkes County Daymark were entered into evidence. Although Father had completed treatment on 14 October 2021, he tested positive for methamphetamine through the



use of hair follicle samples in April and July 2022. Father testified he had completed a domestic violence assessment through Wilkes County but stated that he was having a difficult time obtaining certification forms. He also testified he had not completed domestic violence classes.

After receiving the evidence presented at trial, the trial court found grounds existed to terminate both Father's and Mother's parental rights based on neglect and willfully leaving the children in DSS custody for over twelve months without showing reasonable progress in correcting the conditions which led to the children's removal. The trial court entered an order terminating the parents' rights to their three children on 4 October 2022. Father filed a written notice of appeal on 17 October 2022.

## **II. Analysis**

Termination of parental rights proceedings are a two-step process: an adjudication stage and a disposition stage. N.C. Gen. Stat. §§ 7B-1109, 7B-1110; *In re A.U.D.*, 373 N.C. 3, 5, 832 S.E.2d 698, 700 (2019). During the adjudication stage, the petitioner must prove by "clear, cogent, and convincing evidence" one or more grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a). N.C. Gen. Stat. § 7B-1109(e)-(f); *In re A.U.D.*, 373 N.C. at 5, 832 S.E.2d at 700.

This Court reviews an adjudication order to determine whether the trial court's "findings of fact are supported by clear, cogent, and convincing evidence and whether these findings, in turn, support the trial court's conclusions of law." *In re D.T.L.*, 219

N.C. App. 219, 220, 722 S.E.2d 516, 517 (2012) (citations omitted). The court's conclusions of law are subject to *de novo* review on appeal. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation omitted).

“[A]ppellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.” *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (citations omitted). “On appeal, this Court may not reweigh the evidence or assess credibility.” *In re K.G.W.*, 250 N.C. App. 62, 67, 791 S.E.2d 540, 543 (2016) (quoting *Kelly v. Duke Univ.*, 190 N.C. App. 733, 738-39, 661 S.E.2d 745, 748 (2008)).

This court reviews only those challenged “findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58-59 (2019) (citation omitted). A finding of only one ground under N.C. Gen. Stat. § 7B-1111(a) “is necessary to support a termination of parental rights.” *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019) (citation omitted).

**A. Termination of Parental Rights based upon Willful Failure to Make Reasonable Progress.**

The trial court terminated Father's parental rights based upon the ground that he willfully left his minor children “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 his children pursuant to Section 7B-1111(a)(2).

“A finding of willfulness is not precluded even if [a parent] has made some efforts to regain custody of the children.” *In re Shepard*, 162 N.C. App. 215, 224-25, 591 S.E.2d 1, 7 (2004) (citation omitted). A finding that a parent acted willfully for purposes of Section 7B-1111(a)(2) does not require a showing of fault by the parent. *In re C.M.S.*, 184 N.C. App. 488, 494, 646 S.E.2d 592, 596 (2007). Instead, a parent’s “prolonged inability to improve [his] situation, despite some efforts in that direction, will support a finding of willfulness regardless of [his] good intentions, and will support a finding of lack of progress sufficient to warrant termination of parental rights.” *In re B.J.H.*, 378 N.C. 524, 530, 862 S.E.2d 784, 791 (2021) (citation omitted). In order for a parent to “avoid the termination of his or her parental rights under § 7B-1111(a)(2)” the parent is required to “make reasonable progress under the circumstances towards correcting those conditions that led to the child being placed in [DSS] custody, irrespective of whoever’s fault it was that the child was placed in [DSS] custody in the first place.” *In re A.W.*, 237 N.C. App. 209, 217, 765 S.E.2d 111, 115-16 (2014) (internal quotation and citation omitted).

Our Supreme Court has held a trial court is permitted to consider evidence of reasonable progress made by a parent leading up to the date of the termination hearing. *In re J.G.B.*, 177 N.C. App. 375, 385, 628 S.E.2d 450, 457 (2006) (citation omitted). Additionally, “parental compliance with a judicially adopted case plan

is relevant in determining whether grounds for termination exist pursuant to N.C. [Gen. Stat.] § 7B-1111(a)(2)” provided “a particular case plan provision addresses an issue that, directly or indirectly, contributed to causing the juvenile’s removal from the parental home, the extent to which a parent has reasonably complied with that case plan provision is, at minimum, relevant to the determination of whether that parent’s parental rights” are subject to termination for failure to make reasonable progress. *In re B.O.A.*, 372 N.C. 372, 384-85, 831 S.E.2d 305, 313-14 (2019). Therefore, we consider Father’s progress in correcting the conditions that resulted in his children’s placement with DSS. *In re A.W.*, 237 N.C. App. at 217, 765 S.E.2d at 115-16.

**B. Challenged Findings of Fact and Conclusions of Law.**

In his appeal, Father challenges several findings related to his progress to correct the conditions which led to the removal of his children and argues they are unsupported by the evidence.

First, Father challenges portions of findings of fact 17 and 52. Finding of fact 17 states: “During his testimony today, [Father] refused to acknowledge the reasons his children were removed from his custody in the first place. He testified that they left his custody because of ‘assumptions’ of abuse and drug use.” Similarly, finding of fact 52 states: “As of the termination proceedings, [Father] continues to deny there was any reason for the minor children to be removed in the first place.” Father contends that the above findings are not supported by clear and convincing evidence

because he recognized his struggle with “substance abuse issues when the children came into DSS custody and that there was domestic violence in the home.” Father also points to his testimony during the hearing where he testified that: “[t]he root of the problem was me.” While Father directs our attention to portions of his testimony throughout the termination hearing, we note that it is the trial court’s role, as the trier of fact, to assess and determine the credibility of testimony and then to assign it weight. *In re J.T.C.*, 273 N.C. App. 66, 70, 847 S.E.2d 452, 462 (2020).

These findings reflect Father’s early testimony at the hearing when he was questioned why his children were removed from his custody and care. Father testified that they were removed because “of assumptions of abuse and drug abuse. Somebody said we was [sic] doing stuff.” Father further testified that domestic violence between he and Mother was “[n]ot an issue.” Father also affirmed that “if the [trial court] previously found domestic violence was an issue [this] would be incorrect.” Although Father might have offered conflicting testimony throughout the hearing, again, any “[c]redibility, contradictions, and discrepancies in the evidence are matters to be resolved by the trier of fact, here the trial judge, and the trier of fact may accept or reject the testimony of any witness.” *Smith v. Smith*, 89 N.C. App. 232, 235, 365 S.E.2d 688, 691 (1988) (citation omitted). Therefore, Father’s challenges to these findings are overruled.

Next, Father challenges portions of findings of fact 32, 43, and 44 and argues they are not supported by clear and convincing evidence. Finding of fact 32 states:

“[I]n July 2022, [Father] submitted to a hair follicle test that returned a positive result for methamphetamine. This indicates that substance use occurred in 2022 following the completion of treatment in October 2021.” Finding of fact 43 states:

“As part of his reunification case plan, [Father] was ordered to complete a Substance Abuse Assessment and follow all recommendations. While he did complete an assessment as well as all the classes in 2021, he tested positive for methamphetamine in July 2022, the month before this TPR motion was to be heard.”

Finding of fact 44 states: “Several years into a case in which three of his minor children were removed from his care, [Father] was still using methamphetamine, the use and sale of which was one of the reasons for the children’s removal. He is not in compliance with the recommendations of his drug treatment.”

In contesting these findings, Father points to previous hair and urine drug screen tests and notes that a hair follicle screen at the end of May 2022 was negative for all substances. Father also takes issue with the hair follicle screens done on hair from Father’s chin and argues that “[t]he only evidence at the termination hearing regarding the coverage of hair follicle screens came from [his] father, who was familiar with drug testing procedures from his employment as a supervisor at a company that drug tested.” Father argues that a hair follicle sample taken in April 2022, where he tested positive for substances, “would have covered a period before Father completed the substance abuse treatment program in October 2021.” Father further argues that he completed additional relapse prevention treatment into May

2022 and again, the hair follicle screen conducted at the end of May 2022 was negative for all substances.

While Father produced some negative drug screen results during the course of his case plan, Father continued to test positive during other drug screenings, including in the months leading up to the termination hearing. At the termination hearing, Father testified that the last time DSS asked him to take a drug test was “about a month ago” and that “[t]he hair follicle test came back positive” for methamphetamines. Weighing the credibility of Father’s testimony at the hearing, the trial court determined that Father had a positive drug screening as recently as July 2022. Additionally, after a permanency planning hearing in April 2022, Father submitted to a hair follicle test which returned a “positive” drug result for methamphetamine. Thus, based upon this record evidence, the trial court made a reasonable inference that although Father’s May 2022 hair follicle test was negative, Father continued to use illegal substances three years into his case plan. Therefore, Father’s argument is overruled.

Father also challenges the trial court’s determination that he is not in compliance with the recommendations of his treatment, as found in finding of fact 44, and argues there was “no evidence of any further recommendations of his substance abuse treatment that he had not completed.” We disagree. The record reflects that during a Daymark assessment completed on 26 April 2021, Father was diagnosed with amphetamine use disorder and was recommended to participate in group

therapy, individual therapy, peer support services, and medication management. The record evidence also shows that Father attended only one individual therapy session and one peer support session, both on 10 May 2021. While Father did receive a certificate for complying with the requirements for group therapy, the record evidence reflects that he did not successfully comply with the other requirements of his substance abuse treatment. Therefore, Father's arguments have no merit and are overruled.

Next, Father challenges finding of fact 33. This finding states:

[Father] testified that he completed a domestic violence assessment in March 2021 in Wilkes County and completed the recommended classes. However, he could not produce any proof of completing this part of his case plan nor could he name the agency where he completed the assessment or classes. [Father] did not inform [DSS] Social Worker Dones about either of these things. The [c]ourt does not find [Father's] testimony on this point to be credible.

Father argues his testimony at the hearing clarified that he had completed the assessment but not any further classes. However, Father seems to suggest that he still met the requirement of completing domestic violence classes because his "parenting classes had a domestic violence component [and] [h]e was no longer living with [Mother] or romantically involved with [her]." We disagree.

While the record evidence shows Father testified to taking a number of parenting classes, he did not testify to taking a parenting class centered around domestic violence. Although Father testified he is no longer living with the children's



mother, the record evidence reflects he could not provide verification of having completed a domestic violence assessment in Wilkes County and admitted he did not complete the recommended domestic violence treatment classes. Because the trial court weighs the “[c]redibility, contradictions, and discrepancies in the evidence” there is competent evidence to support the trial court’s determination Father did not comply with this portion of his case plan. *Id.* (citation omitted). Therefore, Father’s arguments are overruled.

Father challenges a portion of finding of fact 54 because it “is not supported by clear and convincing evidence and should be disregarded.” The challenged finding states Father “is either in the same position or in a worse position than he was in November 2019 when his three minor children were removed from his custody, care, and control, and any progress he has made could only be described as minor.” First, it is undisputed that his children were willfully left in the custody of DSS for nearly three years. By his own admission, Father agreed that “things have gotten worse since DSS took [his] kids” and that he is in a worse position today than he was three years ago. Despite some efforts by Father to comply with his case plan, the record evidence demonstrates his failure to acknowledge the cause of his children’s removal from his care and failure to adequately correct the conditions which led to their removal.

Therefore, we conclude sufficient competent evidence supports the trial court’s findings of fact to support the trial court’s conclusion that grounds existed to

terminate Father's parental rights. Father willfully left Dylan, Blake, and Charlotte 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 children pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). "Because a finding of only one ground is necessary to support a termination of parental rights," we need not address Father's arguments regarding the trial court's findings on the grounds of neglect. *In re A.R.A.*, 373 N.C. at 194, 835 S.E.2d at 421 (citation omitted). Furthermore, because Father does not contest the trial court's dispositional findings regarding the children's best interests, we do not address the disposition in the termination order.

### **III. Conclusion**

For the above reasons, we affirm the trial court's order terminating Father's parental rights to his minor children.

AFFIRMED.

Judges CARPENTER and RIGGS concur.

Report per Rule 30(e).