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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-74

Filed 7 November 2023

Durham County, Nos. 18 JT 141, 18 JT 142, 18 JT 143

IN THE MATTER OF: E.W., J.W., A.W.

Appeal by respondent-mother and respondent-father from order entered 1 September 2022 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 4 October 2023.

*Keith T. Roberson for petitioner-appellee Durham County Department of Social Services.*

*McGuireWoods, LLP, by Anita M. Foss, for guardian ad litem.*

*J. Thomas Diepenbrock for respondent-father.*

*Ewing Law Firm, P.C., by Robert W. Ewing, for respondent-mother.*

PER CURIAM.

Respondent-parents (“Parents”) are the mother (“Mother”) and father (“Father”) of minor children E.D.W. (“Ed”), J.D.W. (“John”), and A.N.W. (“Andy”).<sup>1</sup> Parents appeal from the district court’s order terminating their parental rights to the children. After careful consideration, we affirm.

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<sup>1</sup> Pseudonyms used for protection of children’s identities and ease of reading.

I. Background

Ed was born in February 2009, John was born in March 2010, and Andy was born in March 2015. Mother and Father have a history of domestic violence. From spring of 2018 to February 2020, Father was incarcerated for assaulting Mother.

Since 2011, the Durham County Department of Social Services (“DSS”) received reports concerning Mother, including allegations that the children were neglected and domestic violence occurred in their presence. From April to June 2018, DSS received multiple reports that prompted its intervention: (1) a report that Mother allowed two adult residents of the homeless shelter where they were residing to hit John, leaving him with welts; (2) a report that three-year-old Andy was walking unattended on a busy street at night, and, when he was returned home, Mother and boyfriend were unaware he had ever left the house; and (3) a report that the children were begging for food from neighbors at night in the rain, they were always unattended outside, they were always hungry and begging, Mother beat John for begging, and Mother and her boyfriend were often drunk or high.

In July 2018, the trial court granted nonsecure custody of the children to DSS.

Two months later, in September 2018, the trial court adjudicated Ed, John, and Andy to be dependent and neglected children. The court established a case plan for Mother which included requirements that she (1) complete a Parenting Capacity Assessment and follow any mental health recommendations; (2) complete a parenting

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education program addressing appropriate discipline, supervision, and safety; (3) comply with all mental health services currently in place; (4) maintain stable income and housing; (5) demonstrate a willingness and ability to care for the children; (6) refrain from substance use and submit to random drug screenings; (7) maintain contact with the social worker; (8) complete a domestic violence assessment and follow any recommendations; and (9) participate in the children's mental health services.

From September 2018 to the time of the termination hearings, Mother continued to be involved in domestic violence incidents. She remained in an abusive relationship with her boyfriend and married him. After that relationship ended, Mother and Father were involved in more domestic violence incidents. During her court-ordered domestic violence classes, she repeated the same lesson over and over again instead of progressing with a course.

Mother has a learning disability, depression, and anxiety. In 2021, she was hospitalized. However, she denied at the termination hearing that she had been diagnosed with depression or anxiety. Additionally, Mother did not maintain stable housing, as she moved between shelters, hotels, short-term rentals, and staying with friends throughout this time period.

Prior to Father's February 2020 release from prison, the trial court ordered a case plan for him requiring him to (1) complete a Parenting Capacity Assessment; (2) complete a parenting education program addressing appropriate discipline,

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supervision, and safety; (3) comply with all recommended mental health services currently in place; (4) maintain stable income and housing; (5) demonstrate a willingness and ability to care for the children; (6) refrain from substance use and submit to random drug screenings; (7) maintain contact with the social worker; (8) complete a domestic violence assessment and follow any recommendations; and (9) participate in the children's mental health services.

After his release from prison, Father was involved in at least two domestic violence incidents and failed to complete a domestic violence program. Additionally, Father did not maintain his schizophrenia medication. He immediately stopped receiving his monthly injections after his release and switched to daily oral medication. But he did not consistently take this new medication. Notably, he did not take it for most of the spring and summer of 2021, and he admitted at the 22 February 2022 termination hearing that he had not taken his medication for two weeks. He also claimed he was misdiagnosed with schizophrenia and did not need medication. Father resided in a number of places post-incarceration, including at a homeless shelter and with various family members.

At the time of the termination hearing, he was living in a vacant home that he was hired to remodel.

On 10 February 2020, DSS filed a petition to terminate Parents' parental rights to the children. On 1 September 2022, after multiple hearings on the matter, the trial court entered an order terminating Parents' parental rights under N.C. Gen.

Stat. § 7B-1111(a)(1) and (a)(2). Parents timely appealed.

## II. Standard of Review

The Juvenile Code “provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020). In their respective briefs, Mother and Father only cite the standard of review for the determinations made by the trial court at the adjudication stage. And the issues they raise only concern those determinations made at that stage.

“At the adjudicatory stage, the petitioner bears the burden of proving by ‘clear, cogent, and convincing evidence’ the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes.” *In re A.U.D.*, 373 N.C. 3, 5-6, 832 S.E.2d 698, 700 (2019). We review a trial court’s adjudication “to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019). The trial court’s findings of fact supported by “ample and competent evidence” are binding on appeal, even if there is contradictory evidence. *In re Montgomery*, 311 N.C. 101, 112-13, 316 S.E.2d 246, 254 (1984).

## III. Analysis

Mother and Father each challenge the trial court’s conclusion that grounds existed to terminate their parental rights based on neglect under Section 7B-1111(a)(1) and based on willful abandonment under Section 7B-1111(a)(2).

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For the reasoning below, we conclude that there were grounds for termination for each Parent based on willful abandonment; accordingly, we need not address the ground of neglect. *See In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986) (holding that once one statutory ground for termination is established, this Court need not address challenges of other grounds).

Under N.C. Gen. Stat. § 7B-1111(a)(2), parental rights may be terminated if

[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 has been made in correcting those conditions which led to the removal of the juvenile.

“To uphold the trial court’s order [on this ground], we must find that the respondent’s failure [to show reasonable progress] was willful, which is established when the respondent had the ability to show reasonable progress but was unwilling to make the effort.” *In re Shermer*, 156 N.C. App. 281, 289, 576 S.E.2d 403, 409 (2003).

Here, the children had been placed outside the home for almost four years at the time of the termination hearing. We conclude that the findings made by the trial court support its determination that Mother had failed to show reasonable progress toward correcting the conditions that led to the children’s 2018 removal and that her failure was willful. For instance, in addition to the findings outlined above, the trial court found that Mother’s actions in addressing her domestic violence issues were not meaningful. During her domestic violence treatment, Mother listened to the curriculum, but “[t]here was no exchange of ideas, no question and answer, no

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apparent learning” by Mother. She did not participate in therapy—the teacher simply lectured at her. And she remained involved with perpetrators of domestic violence against her, maintaining a personal relationship with Father and marrying another perpetrator during the period after the children were removed from her care.

Additionally, Mother’s parenting skills have not improved. The court found “there has been no evidence, despite completing the [parenting] courses, that the Mother can parent the children.” For example, she relies on other parties to redirect the children during visitations, lacks structure during visitations, and is unable to handle the children’s mental and behavioral issues. Her psychological evaluation showed she has “limited insight” and does not understand the children’s long-term needs, which causes her to remain in unhealthy relationships and gives her “an inability to ensure the safety of the children and protect them from injurious environments in the future.”

Accordingly, we affirm termination of Mother’s parental rights on the ground of willful failure to make reasonable progress.

Father contends leaving his children in foster care was not willful. He also challenges the conclusion that he has not made reasonable progress in correcting the conditions that led to the children’s removal.

In analyzing this statute, our Court has previously stated that

willfulness means something less than willful abandonment. A finding of willfulness does not require a showing of fault by the parent . . . willfulness is not

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precluded just because respondent has made some efforts to regain custody of the child.

*In re Oghenekevebe*, 123 N.C. App. 434, 439-40, 473 S.E.2d 393, 398 (1996).

“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 (2001). “Extremely limited progress is not reasonable progress.” *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224-25 (1995).

Here, Father’s willfulness is established by his unwillingness to make the effort to show reasonable progress. Father failed to complete the court-ordered services addressing his mental health, medications, and history of domestic violence or to maintain stable housing. While he has enrolled in and/or partially completed some services, that is not sufficient to show reasonable progress—any progress made in his partially-completed services was extremely limited, not reasonable.

Accordingly, we affirm termination of Father’s parental rights on the ground of willful failure to make reasonable progress.

IV. Conclusion

For the reasons set forth above, we affirm the trial court’s termination of Parents’ parental rights to the children.

AFFIRMED.

Panel consisting of Judges DILLON, ARROWOOD, and STADING

Report per Rule 30(e).