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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1075

Filed 7 May 2024

Lincoln County, No. 22 JT 05

IN THE MATTER OF:

M.K.P-C.,

Juvenile.

Appeal by respondent-mother from order entered 1 September 2023 by Judge Micah Sanderson in Lincoln County District Court. Heard in the Court of Appeals 2 April 2024.

Lauren Vaughan for petitioner-appellee Lincoln County Department of Social Services.

Keith Karlsson for guardian ad litem.

Hooks Law, P.C., by Laura G. Hooks, for respondent-appellant mother.

THOMPSON, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights to the minor child Malo¹ on the ground of failure to correct the

¹ A pseudonym is used to protect the identity of the minor child.

conditions that led to the removal of the juvenile from her home. After careful review, we reverse.

I. Factual Background and Procedural History

Respondent-mother is the biological mother of Malo, who was born on 20 December 2021. Ten days after his birth, Lincoln County Department of Social Services (DSS) received a report that Malo was not receiving proper care in that he was not gaining weight. DSS obtained custody of Malo on 3 January 2022.

On 27 March 2023, DSS filed a petition to terminate respondent-mother's parental rights in Lincoln County District Court. The termination petition alleged that respondent-mother had left Malo in foster care for more than twelve months without making reasonable progress under the circumstances in correcting the conditions that led to Malo's removal. On 11 July 2023, a hearing was held on the termination of parental rights petition, and by order entered 1 September 2023, the court terminated respondent-mother's parental rights to Malo pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). From this order, respondent-mother entered timely written notice of appeal.

II. Discussion

A. Standard of review

“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 M.R.F.*, 378 N.C. 638, 641, 862 S.E.2d 758, 761 (2021)

(citation, internal quotation marks, and brackets omitted).

B. N.C. Gen. Stat. § 7B-1111(a)(2)

On appeal, respondent-mother contends that “[t]he trial court erred in concluding that [respondent-mother] willfully left Malo in foster care without making reasonable progress [in correcting the conditions that led to his removal].” We agree.

“Our 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 M.B.*, 382 N.C. 82, 85, 876 S.E.2d 260, 264 (2022) (citation omitted). “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 [N.C. Gen. Stat.] § 7B-1111(a).” *Id.* (citation and internal quotation marks omitted). “We review an adjudication order to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.” *Id.* (citation and internal quotation marks omitted). “The trial court’s conclusions of law are reviewable de novo on appeal.” *Id.* (citation omitted).

N.C. Gen. Stat. § 7B-1111(a)(2) provides that a trial court may terminate parental rights to a minor child if

[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than [twelve] 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) (2023).

“The willfulness of a parent’s failure to make reasonable progress toward correcting the conditions that led to a child’s removal from the family home is established when the parent had the ability to show reasonable progress, but was unwilling to make the effort.” *M.B.*, 382 N.C. at 88, 876 S.E.2d at 266 (citation omitted).

In the present case, however, upon our careful review of the record, transcripts, and exhibits—or lack thereof—admitted into evidence at, or prior to, the termination of parental rights hearing on 11 July 2023, we conclude that the underlying juvenile petition and adjudication order were not admitted into evidence. As established above, “[o]ur Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage[,]” *id.* at 85, 876 S.E.2d at 264 (citation omitted), and in order to terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), the court must determine that the parent did not make “reasonable progress under the circumstances . . . in correcting those conditions which led to the removal of the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(2).

In termination of parental rights proceedings pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), the juvenile petition and adjudication order establish the conditions that led to the removal of the minor children. It is unclear how the trial court in this matter could conclude, as a matter of law, that respondent-mother had failed to make reasonable progress in correcting the conditions that led to Malo’s removal, without

DSS establishing *what those conditions were* by “clear, cogent, and convincing evidence.” *M.B.*, 382 N.C. at 85, 876 S.E.2d at 264 (citation and internal quotation marks omitted).

At the termination of parental rights hearing, DSS submitted two parental capacity evaluations, one of which was conducted *before Malo was born*, and DSS’s *own court report* into evidence to support DSS’s termination of parental rights petition. Despite the social worker assigned to Malo’s case testifying that Malo was adjudicated neglected on 12 April 2022, DSS’s attorney did not move to admit the adjudication order or the juvenile petition at that time. Indeed, there is no record of the underlying juvenile petition, nor the underlying adjudication order, which, according to DSS, concluded that respondent-mother had “neglected [Malo] based on residing in an injurious environment and receiving improper care while in the custody of his mother.” Absent this essential evidence, which, again, establishes the conditions that led to the removal of Malo, we cannot determine whether the trial court’s conclusion of law, that respondent-mother’s failure to correct the conditions that led to Malo’s removal, was supported by clear, cogent, and convincing evidence. For this reason, the order of the trial court must be reversed.

III. Conclusion

We conclude that the trial court’s conclusion of law that grounds existed to terminate respondent-mother’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) was not supported by clear, cogent, and convincing evidence. For this

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reason, the order terminating respondent-mother's parental rights is reversed.

REVERSED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).