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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-825

Filed 2 April 2024

Chatham County, No. 21-JT-45

IN THE MATTER OF:

M.R.B.

Appeal by Respondent-Appellant (“mother”) from order entered 8 May 2023 by Judge Sherri Murrell in Chatham County District Court. Heard in the Court of Appeals 20 February 2024.

Law Office of Jason R. Page, PLLC, by Attorney Jason R. Page, for the respondent-appellant mother.

Stephenson & Fleming, LLP, by Attorney Jane R. Thompson, for the petitioner-appellee Chatham County DSS.

Wake Forest Law Appellate Advocacy Clinic, by John J. Korzen, for Guardian Ad Litem.

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STADING, Judge.

Respondent-Appellant (“mother”) appeals the trial court’s order terminating her parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(1), (a)(2), and (a)(6) (2023).

For the reasons below, we affirm.

I. Background

Matthew's¹ case begins with his birth, at which point both he and his mother tested positive for marijuana, an incident that coincided with the removal of his father from the hospital due to erratic behavior. The early months of Matthew's life were marked by exposure to an unsafe environment, including access to drug paraphernalia by the age of seven months. The Department of Social Services ("DSS") became involved following reports that Matthew was exposed to methamphetamines, cocaine, and marijuana—due to his mother's actions—including taking him to known drug houses. These reports were substantiated by findings of drug paraphernalia within their living environment and mother's later admissions of drug use.

Alleging Matthew's neglect, on 18 August 2021 DSS petitioned the trial court for a determination of whether he needed care, protection, or supervision of the State. At a hearing on 14 October 2021, Matthew was declared neglected, and custody was maintained by DSS, with his placement continuing with his great-grandmother. During this period, mother was incarcerated and Matthew's father, a registered sex offender, was on parole for drug possession. The trial court mandated that mother complete a psychological and parental competency evaluation, engage in mental health services, undergo a substance disorder assessment, submit to random drug

¹ A pseudonym is used to protect the minor child's identity. See N.C. R. App. P. 42.

tests, be evaluated for Family Treatment Court participation, and show competent parenting.

Matthew's placement with his great-grandmother was intended to provide stability. Yet this arrangement led to further complications, including additional exposure to cocaine and significant environmental concerns, such as high lead levels and a bed bug infestation, impacting his well-being and development. In response to these continued challenges, DSS placed Matthew in foster care on 29 April 2022. This change marked a significant improvement in Matthew's environment, evidenced by reported advancements in his developmental, social, and academic indicators.

The legal proceedings led to the termination of mother's parental rights on 8 May 2023. The trial court's decision was informed by a comprehensive review of mother's ongoing substance abuse, erratic behavior, lack of stable housing, and insufficient parenting skills, juxtaposed with Matthew's developmental needs and his positive response to a stable and nurturing environment with the foster parents. The trial court found that the following grounds existed to terminate mother's parental rights: (1) neglect under N.C. Gen. Stat. § 7B-1111(a)(1); (2) failure to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2); and (3); mother is incapable of providing for Matthew's proper care and supervision, and a reasonable probability existed that the incapability would continue into the foreseeable future under N.C. Gen. Stat. § 7B-1111(a)(6).

As to neglect under N.C. Gen. Stat. § 7B-1111(a)(1), the trial court found Matthew was adjudicated neglected and referenced a prior order dated 19 November 2021 based on a hearing that was held 14 October 2021. In support, the trial court noted mother's delay in seeking substance abuse treatment, her actual substance abuse, her failure to maintain a safe and stable home, her exposing Matthew to harmful substances, and her failure to ensure Matthew receives necessary care. Based on these factors, the trial court found that such neglect would continue if Matthew returned to mother's care.

As an alternative basis, the trial court found that grounds existed to terminate mother's parental rights under N.C. Gen. Stat. § 1111(a)(2) because mother "willfully left [] [Matthew] in foster care or placement outside the home for more than [twelve] months without showing to the satisfaction of the court that reasonable progress . . . has been made in correcting those conditions" that led to his removal. The trial court noted that Matthew entered foster care on 18 August 2021 and remained in foster care through the date of the order, 3 May 2023. The trial court reiterated the conditions that led to Matthew's removal: mother's substance and mental health disorders; child-protective services history; criminal history; lack of housing; exposure to harmful environmental substances; and parenting skill deficits, among others. The trial court found that mother has not made "reasonable progress" to rectify the conditions that initially led to Matthew's removal. The trial court stated that mother "did not begin to address any of the [] issues meaningfully prior to

August 2022, one year after [] [Matthew] entered foster care.” The trial court found that, at best, it would take mother “more than twelve additional months to address the safety issues leading to” Matthew’s removal. The trial court noted that poverty was not the only reason that mother failed to progress.

The trial court found a third basis for terminating mother’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(6). That is, the trial court found that mother could not provide for the care and supervision of Matthew, and there was a reasonable probability that such incapability would continue into the foreseeable future. The trial court’s findings noted mother’s mental health concerns, which date back to when she was as young as five years old. Additionally, the trial court findings included the results of mother’s psychological evaluation, in which she was diagnosed with “Stimulant Use Disorder, severe; Cannabis Use Disorder, moderate; Opiate Use Disorder, severe; ADHD; Bipolar Disorder I, most recent episode depressed, with psychotic features; and PTSD.” Mother’s substance abuse disorders were considered in early remission due to mother’s incarceration. Because of her disorders, mother reported being prescribed a series of medications that the trial court found “may affect [mother’s] ability to care for [] [Matthew] safely and to respond to his changing developmental needs.” The trial court found that mother received only sporadic mental health treatments and had not “consistently addressed her mental health disorders in a manner that would produce long-standing results.” The trial court found that until mother entered treatment in October 2022, she had not been “able

to engage successfully with supportive services for her substance use disorder.” The trial court listed that mother’s “psychological testing suggests characteristics associated with an increased risk of child abuse.” The trial court found that mother was unlikely to parent Matthew independently until her mental health and substance abuse disorders “are effectively treated and managed.” In light of the foregoing, the trial court held that there was a reasonable probability that mother’s incapability would continue because mother’s mental health disorders and intellectual functioning deficits are “persistent and are not likely to improve sufficiently for her to safely parent [] [Matthew].” Lastly, in further support, the trial court found that mother lacked “a proper childcare arrangement” given that Matthew “was exposed to substances when placed in the only kinship home [] mother suggested, and [that] home [was] not appropriate.”

After the trial court found the grounds above for termination “based on clear, cogent, and convincing evidence,” the trial court determined it would be in Matthew’s best interest to terminate mother’s parental rights. Matthew was ordered to remain placed in the care of the foster parents. Mother filed her notice of appeal on 22 May 2023.

II. Jurisdiction

The Court has jurisdiction per N.C. Gen. Stat. §§ 7A-27(b) and 7B-1001(a)(7) (2023).

III. Analysis

On appeal, mother raises the following issues: (1) whether the trial court erred by finding grounds to terminate mother's rights for neglect when the trial judge specifically ruled from the bench that there were insufficient grounds for neglect under N.C. Gen. Stat. § 7B-1111(a)(1); (2) whether the trial court erred by finding that grounds existed to terminate mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) despite noting countervailing evidence; (3) whether the trial court erred by terminating mother's rights under N.C. Gen. Stat. § 7B-1111(a)(6) when mother's "inability to care for Matthew will not continue for the foreseeable future, and she had an appropriate alternative childcare arrangement[;]" and (4) whether trial court abused its discretion in terminating mother's rights. Because we affirm the trial court's finding for willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(2), we need not consider other grounds asserted by mother. *Matter of E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) ("[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.").

A. Willful Abandonment

The trial court concluded, under N.C. Gen. Stat. § 7B-1111(a)(2), that the mother willfully left Matthew in foster care for over twelve months without making reasonable progress in correcting the conditions leading to his removal. "Termination under this ground requires the trial court to perform a two-step analysis where it

must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.” *In re Z.A.M.*, 374 N.C. at 95–96, 839 S.E.2d 792 (citing *In re O.C.*, 171 N.C. App. 457, 464–65, 615 S.E.2d 391, *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005)). Under the first step, “the twelve-month period begins when a child is left in foster care or placement outside the home pursuant to a court order, and ends when the motion or petition for termination of parental rights is filed.” *In re J.G.B.*, 177 N.C. App. 375, 383, 628 S.E.2d 450 (2006).

The trial court’s order contained the following in support of the conclusion that mother failed to make reasonable progress under to N.C. Gen. Stat. § 7B-1111(a)(2):

25. Grounds exist to terminate Respondent mother’s parent rights under [N.C. Gen. Stat.] § 7B-1111[(a)](2) in that Respondent mother 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.

26. The juvenile entered foster care on 18 August 2021 and remains in foster care at this time.

28. The conditions that led to the removal of the juvenile include the following, without limitation:

- a. Ongoing substance use and mental health disorders,
- b. Child protective services history,

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- c. Criminal history,
- d. Lack of housing
- e. Exposure to substances detected in an environmental drug screen of the juvenile's hair,
- f. Parenting skills deficits, and
- g. Other less tangible underlying issues that, pursuant to 7B-904(d1)(3), led to or contributed to the Court's decision to place the juvenile in [DSS] custody.

29. Respondent mother has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the juvenile in that she did not begin to address any of these issues meaningfully prior to August 2022, one year after the juvenile entered foster care. At best, it would take her more than twelve additional months to address the safety issues leading to the juvenile's removal, which is not a reasonable amount of time for the juvenile to wait for permanence.

30. Poverty is not the only reason Respondent failed to make progress.

Relevant here, the trial court also made the following conclusions of law:

5. Visitation is in the best interest of the juvenile to the extent laid out below.

9. The placement and care of the juvenile are the responsibility of [DSS], and [DSS] shall provide and arrange for foster care or other appropriate placement of the juvenile.

Here, mother challenges what the trial court labeled findings of fact nos. 25 and 29, and conclusions of law nos. 5 and 9. The remaining unchallenged findings of fact "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). The foregoing challenged

findings of fact recite the statutory grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and are therefore better classified as conclusions of law. “[A]ny determination requiring the exercise of judgment or the application of legal principles is more properly classified as a conclusion of law,” and that any determination found through “logical reasoning from the evidentiary facts” is classified as a finding of fact. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted). “The trial court’s classification of its own determination as a finding or conclusion does not govern our analysis.” *In re J.T.C.*, 273 N.C. App. 66, 73, 847 S.E.2d 452, 458 (2020). Thus, when the trial court mislabels “conclusions of law as findings of fact, findings of fact which are essentially conclusions of law will be treated as such on appeal.” *In re J.O.D.*, 374 N.C. 797, 807, 844 S.E.2d 570, 578 (2020) (internal quotation marks and citation omitted). Because findings of fact nos. 25 and 29 appear to conclude applications of legal principles, we proceed with our analysis of the lower court’s determinations *de novo*. See *In re Z.D.*, 258 N.C. at 443, 812 S.E.2d at 671.

First, mother claims that the trial court erred in finding that she willfully left Matthew in foster care or placement outside the home. Mother conceded that she was “severely limited by her circumstances,” including a difficult childhood, psychiatric disorders, and substance abuse. Yet mother contends that, based on her mental disorders, the trial court needed to make “specific findings of fact to support a conclusion that such behavior illustrated her willfulness intent rather than

symptoms of her diagnosed mental illness.” Second, mother asserts that she demonstrated sufficient progress to circumvent finding of grounds under N.C. Gen. Stat. § 7B-1111(a)(2). However, mother’s inability to improve her situation, notwithstanding earnest attempts, is sufficient to show willfulness despite her intentions. Mother exhibited several concerning behaviors that led the trial court to conclude that mother failed to make reasonable progress towards improving her situation. *See* N.C. Gen. Stat. § 7B-1111. A finding that a parent acted “willfully” for N.C. Gen. Stat. § 7B-1111(a)(2) purposes “does not require a showing of fault by the parent.” *In re A.M.L.*, 377 N.C. 1, 15, 877 S.E.2d 439, 449 (2021). Instead, a parent’s “prolonged inability to improve [their] situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions, and will support a finding of lack of progress . . . sufficient to warrant termination of parental rights under section 7B-1111(a)(2).” *Matter of J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citations and internal quotation marks omitted). *See In re Baker*, 158 N.C. App. 491, 494, 581 S.E.2d 144 (2003); *In re Matherly*, 149 N.C. App. 452, 455, 562 S.E.2d 15 (2002) (“Evidence showing a parents’ ability, or capacity to acquire the ability, to overcome factors which resulted in their children being placed in foster care must be apparent for willfulness to attach.”). In making that determination, “a trial court has ample authority to determine that a parent’s ‘extremely limited progress’ in correcting the conditions leading to removal adequately supports a determination that a parent’s parental rights in a particular

child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2).” *Matter of B.O.A.*, 372 N.C. 372, 385, 831 S.E.2d 305, 314 (2019) (citation omitted).

The record lays out the conditions that led to Matthew’s removal, including mother’s substance abuse and mental health disorders, hers and Matthew’s history with child-protective services, mother’s criminal history, mother’s lack of housing, Matthew’s exposure to harmful environmental substances, and mother’s parenting skill deficits. The trial court found that mother “did not begin to address any of the[] issues meaningfully prior to August 2022, one year after [] [Matthew] entered foster care.” *See In re S.N.*, 194 N.C. App. 142, 149, 669 S.E.2d 55, 60 (2008), *aff’d*, 363 N.C. 368, 677 S.E.2d 455 (2009) (upholding the termination of a mother’s parental rights in a child under N.C. Gen. Stat. § 7B-1111(a)(2) given that the mother only made limited progress in correcting the conditions that led to the child’s removal from her home and made no attempt to regain custody of her children until after she became at risk of losing them).

The unchallenged findings of fact support the trial court’s conclusions of law that there existed adequate grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). Based on these findings, the trial court concluded that mother had not made “reasonable progress” to correct the conditions that led to Matthew’s removal. The trial court reasoned that, at best, it would take mother “more than twelve additional months to address the safety issues leading to” Matthew’s removal. *See In re I.G.C.*, 373 N.C. 201, 205, 835 S.E.2d 432, 435 (2019);

see also In re J.A.M., 372 N.C. 1, 11, 822 S.E.2d 693, 700 (2019) (“But an important aspect of the trial court’s role as finder of fact is assessing the demeanor and credibility of witnesses, often in light of inconsistencies or contradictory evidence. It is in part because the trial court is uniquely situated to make this credibility determination that appellate courts may not reweigh the underlying evidence presented at trial.”).

The trial court therefore properly concluded that mother willfully left Matthew in foster care or placement outside the home for more than twelve months. Mother possessed the capability to tackle the main reason behind Matthew’s removal—her substantial issues with substance abuse and mental health—before DSS’ intervention and after Matthew’s removal. Even still, she opted not to undertake any corrective action until fourteen months had elapsed, a decision made only after she faced incarceration for contempt of court. *See In re J.W.*, 173 N.C. App. 450, 465-66, 619 S.E.2d 534, 545 (2005) (noting a parent’s “prolonged inability to improve her situation, despite some efforts in that direction,” can support termination under § 7B-1111(a)(2)). Considering the foregoing, the unchallenged findings of facts are supported by “clear, cogent and convincing evidence” and the trial court’s findings “support the conclusions of law.” *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 58-59 (2008). Accordingly, the trial court properly terminated mother’s rights pursuant to § 7B-1111(a)(2).

B. Best Interests

Mother also contends that the trial court abused its discretion under N.C. Gen. Stat. § 7B-1110(a) by determining it was in Matthew’s best interests to terminate her parental rights. If the trial court finds grounds to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a), it proceeds to the dispositional stage where it must “determine whether terminating the parent’s rights is in the juvenile’s best interest” based on the following:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a). The trial court’s assessment of a juvenile’s best interests at the dispositional stage is reviewed only for abuse of discretion. *In re K.N.K.*, 374 N.C. 50, 56, 839 S.E.2d 735, 740 (2020); *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523,

527 (1988). Dispositional findings not challenged by mother are binding on appeal.

In re Z.L.W., 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019) (citation omitted).

In this case, the trial court made the requisite findings, which include:

b. Termination of Respondent's parental rights is necessary to implement the permanent plan of adoption.

c. Termination of parental rights for Respondent parents are the only barriers to the adoption of the juvenile, and those barriers can be overcome in a reasonable period of time.

d. The juvenile is three years old.

e. The likelihood of adoption is high. His current foster parents would love to adopt him.

f. The juvenile does not recognize Respondent mother. He has only consistently visited her for four out of the [nineteen] months of his time in foster care. While Respondent mother appears to love and care deeply for the juvenile, there is no bonding from the juvenile's perspective.

g. The relationship between the juvenile and his foster parents is loving and warm. He calls his foster parents "mom and dad." The juvenile is very attached to them. The foster/adoptive parents have earned the juvenile's trust through loving consistency and lots of physical affection.

h. The juvenile is thriving in his current stable and loving environment.

i. The juvenile has made great strides developmentally since living with his current placement providers, who wish to adopt him. His speech and ability to communicate have greatly improved.

j. The juvenile is a bubbly, happy boy who smiles and laughs readily and is loving and affectionate toward both [foster parents].

Mother concedes that the trial court considered the first five factors but argues that it should have considered "several other relevant issues." In other words, mother

asks this Court to reassess the evidence by framing her argument around what she believes the trial court ought to have considered. This approach, however, prompts a request for this Court to engage in a reevaluation of the evidence. Consistent with established jurisprudence, this Court has articulated its position on such matters, asserting a clear refusal to “accept any invitation to reweigh the evidence and make an independent dispositional decision on appeal.” *In re I.N.C.*, 374 N.C. 542, 551, 843 S.E.2d 214, 220 (2020). This stance underscores the appellate court’s commitment to respecting the trial court’s primary role in assessing evidence and determining factual matters, thereby reinforcing the principle that appellate review is limited to evaluating the legal sufficiency and procedural correctness of the trial court’s decisions.

As a result, we see no abuse of discretion by the trial court. The overwhelming factors—including Matthew’s attachment to his foster parents and mother’s inability to provide a stable environment—solidify this conclusion. The trial court properly considered the statutory criteria outlined in N.C. Gen. Stat. § 7B-1110(a), balancing the permanency plan for Matthew against the potential for mother’s rehabilitation. Since we conclude that the trial court did not abuse its discretion, we affirm its decision to terminate mother’s parental rights.

IV. Conclusion

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

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AFFIRMED.

Chief Judge Dillon and Judge Stroud concur.

Report per Rule 30(e).