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NO. COA01-1306

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

IN THE MATTER OF:

DENISE LUCILLE-VIOLA AUSTEN

Davidson County
No. 00 J 243

Appeal by respondent mother from order filed 12 June 2001 by Judge Martin J. Gottholm in Davidson County District Court. Heard in the Court of Appeals 26 March 2002.

Doris C. Gamblin, and David A. Perez for petitioner-appellee Davidson County Department of Social Services.

Randy L. Cranford for respondent-appellant Denise Sedalia Austin.

Laura Bodenheimer Beck, attorney advocate.

GREENE, Judge.

Denise Sedalia Austin (Respondent) appeals an order filed 12 June 2001 terminating her parental rights as the mother of Denise Lucille-Viola Austen (Austen).

On 5 September 2000, the Davidson County Department of Social Services (DSS) filed a petition to terminate the parental rights of Respondent, Eddie Lewis Harrison, Jr. (Harrison), the putative father of Austen, and the unknown biological father. DSS specifically alleged that Respondent had: (1) neglected the minor child Austen; (2) willfully left Austen in foster care for more

than twelve months without showing Respondent had made any reasonable progress under the circumstances within twelve months in correcting the conditions that led to Austen's removal; (3) failed to pay a reasonable portion of support for Austen for a continuous period of six months after Austen had been placed in the custody of DSS; and (4) willfully abandoned Austen for at least six consecutive months immediately preceding the filing of the petition. On 10 October 2000, Respondent filed an answer denying the material allegations of the 5 September 2000 petition. Harrison and the unknown father did not respond to the pleadings.

In an order filed 12 June 2001, the trial court entered the following pertinent findings of fact:

15. Following the birth of the minor child [Austen] on May 2, 1998[,] a Child Protective Services referral was made to [DSS] which alleged bizarre behavior on the behalf of [Respondent]. Thomas Sweeney, [a] Social Worker with [DSS,] interviewed [Respondent] and found that she had no support system and no plan of care for [Austen]. A Juvenile Petition which alleged neglect of the minor child was filed by [DSS] on May 14, 1999 [sic].

16. That from the period of May 14, 1998 through October 15, 1998 [Respondent] was provided with intensive services through [DSS,] including in-home treatment workers and in-home maternal outreach workers. Due to the concern of the maternal outreach workers on October 15, 1998[,] an Amended Juvenile Petition was filed by [DSS]. An Order to Assume Custody [of Austen] was entered by the Honorable James M. Honeycutt on October 15, 1998. [Austen] has remained in foster care since that date.

17. That on June 29, 1998 [Respondent] was ordered by the Court to participate in and complete a psychological evaluation.

[Respondent] consistently refused to comply with the Court Order. She kept only one appointment with mental health for the purpose of completing her psychological evaluation. She missed scheduled appointments on August 17, October 5, and October 12, 1998. [Respondent] had legally changed her name from Charema Carson to Denise Sedalia Austin and stated that her refusal to comply with the Court Order was due to the name appearing on the prior Orders of the Court no longer being her name. On September 14, 1998 and October 19, 1998[,] the Honorable Samuel A. Cathey ordered that [Respondent] complete all previously ordered psychological evaluations. [Respondent] was also ordered by the Honorable James M. Honeycutt to complete her psychological evaluation and to attend all necessary appointments. [Respondent] failed to comply with these Orders by not keeping scheduled appointments and by not appearing for her scheduled appointments.

18. That an incomplete psychological evaluation . . . was submitted by M. Douglas Jackson, Ph.D. [(Dr. Jackson)] . . . for [Respondent] Dr. Jackson drew the following conclusions as contained in his evaluation summary:

[Respondent's] guardedness, her circular and tangential discussions, and the frequent contradictory information presented by [Respondent] in relation to the evaluation findings of earlier assessments and investigations[] leads this examiner to be cautious about [Respondent's] current emotional status. I would suspect that there are significant underlying emotional difficulties that interfere with [Respondent's] ability to parent. However, this evaluation is incomplete regarding the nature of such underlying conditions I would recommend that [Respondent] participate in a comprehensive psychological evaluation to identify her parenting strengths and weaknesses as well as any underlying psychological condition

19. That a psychological evaluation was

completed by Robert Borgman, Ph.D.,
Psychologist [(Dr. Borgman)] . . . on January
11, 1999.

. . . .

Dr. Borgman made the following conclusion[]:

. . . .

- (4) [Respondent] appears to have a personality disorder which is shown in her repeated misrepresentation [and] miscommunication with others over at least four years Personality disorder is also shown in her failure to follow through on necessary contacts with her children and public authorities in New Jersey. Toddlers receiving care from such mothers may have difficulty distinguishing between what is reality and what is false. As they grow older they may learn to misrepresent to gain advantage or to escape consequence.

Said psychological evaluation . . . was received into evidence by the Court and is incorporated herein by reference.

20. From October 15, 1998 to present, Amy Gould, a foster care/adoption social worker with [DSS] worked closely with [Respondent] and [Austen] and attempted to get [Respondent] to obtain the court ordered psychological evaluation, to comply with the several Orders entered by the Court and to enter into a Case Plan with the agency. This was eventually unsuccessful due in part to [Respondent] indicating that she had changed her name and that she was not bound by prior court orders involving her former name. [Respondent] has attended very few of the hearings involving [Austen] stating that [Austen] had been kidnapped by [DSS] and stating that Dr. Borgman['s] and Dr. Jackson's reports were false.

. . . .

23. That [Respondent] is the mother of four (4) other children. Said Respondent does not have custody of any of her children.

. . . .

25. That [Respondent] testified at this hearing that the proceeding [that terminated her parental rights to her minor child, Nikitl Willie John Kyle Vann,] . . . was done without her knowledge or without her being notified. She further testified that she was too involved in an estate matter to participate in that child's proceeding

. . . .

27. That based upon the Court having heard the testimony of [Respondent] today[,] the Court finds that such testimony was typically nonresponsive, irrelevant, contradictory and that at times such testimony challenged credibility. Such testimony confirms not only the conclusions set out in the prior evaluations of [Respondent] but also the apparent need for continued psychological counseling and treatment of [Respondent].

. . . .

29. That [DSS] has made extensive efforts to encourage [Respondent], [Harrison], and the unknown father to strengthen the parental relationship to [Austen] and to make and follow through with constructive planning for the future of [Austen].

. . . .

31. That the conduct of Respondent[] . . . ha[s] been such as to demonstrate that said Respondent[] will not promote the healthy, orderly physical and emotional growth of [Austen].

. . . .

34. That the Court in its discretion finds that it is in the best interest of [Austen] that the parental rights of [Respondent], [Harrison][,] and the unknown father be terminated.

35. [Austen] has been in a foster care placement since her removal from [Respondent] on October 15, 1998. [Austen] is doing well

in this potential adoptive placement.

The trial court concluded "[t]hat statutory grounds exist for the termination of parental rights of [Respondent]." The trial court relied on N.C. Gen. Stat. § 7B-1111(a)(2) as one of the grounds for terminating Respondent's parental rights, stating "[t]hat . . . Respondent has willfully left the child in foster care or placement outside the home for more than twelve (12) months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within twelve months in correcting those conditions which led to the removal of the child." See N.C.G.S. § 7B-1111(a)(2) (1999). The trial court also terminated the parental rights of Harrison and the unknown biological father, neither of whom were parties to this appeal.

The dispositive issue is whether the trial court's findings of fact support its conclusion to terminate Respondent's parental rights based on section 7B-1111(a)(2).¹

Termination of parental rights proceedings are conducted in two phases: (1) the adjudication phase, governed by N.C. Gen. Stat. § 7B-1109, and (2) the disposition phase, governed by N.C. Gen.

¹Of the findings of fact listed above, Respondent only excepted to finding of fact No. 31. Accordingly, all other findings of fact are presumed to be correct and supported by the evidence. *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982), *appeal dismissed*, 459 U.S. 1139, 74 L. Ed. 2d 987 (1983). Moreover, as finding of fact No. 31 was supported by the psychological evaluations of Dr. Borgman and Dr. Jackson, there was no error in respect to the trial court's finding. See *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

Stat. § 7B-1110. See *In re Mitchell*, --- N.C. App. ---, ---, 559 S.E.2d 237, 241 (2002) (citations omitted). During adjudication, the burden of proof rests on the petitioner to prove by clear, cogent, and convincing evidence that one or more of the statutory grounds set forth in section 7B-1111 for termination exists. *Id.*; see N.C.G.S. §§ 7B-1109(e)-(f) (1999). The standard of appellate review is whether the trial court's findings are supported by clear, cogent, and convincing evidence and whether the findings support the conclusions of law. *Huff*, 140 N.C. App. at 291, 536 S.E.2d at 840.

If the petitioner meets its burden of proof that grounds for termination exist, the trial court enters the disposition phase and must consider whether termination is in the best interest of the child. See N.C.G.S. § 7B-1110(a) (1999); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). "The trial court has discretion, if it finds by clear, cogent, and convincing evidence that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the best interests of the child." *Mitchell*, --- N.C. App. at ---, 559 S.E.2d at 241 (citing *Blackburn*, 142 N.C. App. at 613, 543 S.E.2d at 910).

Section 7B-1111 provides nine separate grounds upon which an order terminating parental rights may be based. N.C.G.S. § 7B-1111 (1999). A trial court's finding of one of the statutory grounds for termination, if supported by competent evidence, will support an order terminating parental rights. *In re Nolen*, 117 N.C. App.

693, 700, 453 S.E.2d 220, 225 (1995). The trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *In re Allred*, 122 N.C. App. 561, 569, 471 S.E.2d 84, 88 (1996).

A trial court may terminate parental rights under section 7B-1111(a)(2) upon finding:

The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing . . . that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile.

N.C.G.S. § 7B-1111(a)(2). Willfulness under section 7B-1111(a)(2) is something less than willful abandonment. *Nolen*, 117 N.C. App. at 699, 453 S.E.2d at 224. "A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the child[]. Willfulness may be found where the parent, recognizing her inability to care for the child[], voluntarily leaves the child[] in foster care." *Id.* (citations omitted). In addition to finding that the parent has willfully left her child in foster care longer than twelve months, the trial court must also find that the parent has failed to make reasonable progress in correcting the conditions which led to the removal of the child. N.C.G.S. § 7B-1111(a)(2); see *Nolen*, 117 N.C. App. at 699-700, 453 S.E.2d at 224-25 (merely sporadic efforts by parent to improve her situation constitute willful failure to correct conditions that led to the removal of her child from home); see also *In re Oghenekevebe*, 123 N.C. App. 434, 437, 473 S.E.2d 393, 397 (1996)

(the respondent was found to have willfully left her child in foster care where she failed to show any progress in her therapy until her parental rights were in jeopardy).

The trial court found DSS investigated Respondent after Child Protective Services had notified DSS of "bizarre behavior" by Respondent. Austen had been in foster care since 15 October 1998, which, at the time of the termination of parental rights hearing, was more than twice the time required under section 7B-1111(a)(2). The trial court's findings indicate that during this time, Respondent "consistently refused to comply" with the trial court orders requiring her "to participate in and complete a psychological evaluation." A social worker's attempt to have Respondent "enter into a Case Plan with [DSS]" also failed "due in part to [Respondent] indicating that she had changed her name and . . . was not bound by prior court orders involving her former name." These findings are sufficient to support the trial court's conclusion that DSS had met its burden of showing that Respondent's parental rights could be terminated pursuant to section 7B-1111(a)(2).² See *Mitchell*, --- N.C. App. at ---, 559 S.E.2d at 241; see also *Oghenekevebe*, 123 N.C. App. at 437, 473 S.E.2d at 397; *Nolen*, 117 N.C. App. at 699-700, 453 S.E.2d at 224-25. As the trial court further found that, based on the psychological evaluations and Respondent's testimony as presented in finding of

²Because we have determined that one of the grounds set forth in section 7B-1111 supports the trial court's conclusion to terminate Respondent's parental rights, we need not address Respondent's challenge to the trial court's termination on other grounds. See *Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 225.

fact No. 27, termination of Respondent's parental rights would be in the best interest of Austen, it did not abuse its discretion in ordering the termination of Respondent's parental rights. See *Mitchell*, --- N.C. App. at ---, 559 S.E.2d at 241.

Affirmed.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).