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NO. COA08-1056

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2009

IN THE MATTER OF:
L.M.S.L.

Yadkin County
No. 07 J 18

Appeal by respondent-mother from order entered 19 June 2008 by Judge Jeanie R. Houston in Yadkin County District Court. Heard in the Court of Appeals 30 December 2008.

Court of Appeals

James N. Freeman, Jr., and Dennis Martin for petitioner-appellee Yadkin County Department of Social Services.

Charlotte Gail Blake for appellant-respondent mother.

Pamela Newell Williams for guardian ad litem.

Slip Opinion

ELMORE, Judge.

Respondent-mother appeals from the district court's order terminating her parental rights to her daughter, L.M.S.L. After careful review, we affirm.

On 14 February 2007, the Yadkin County Department of Social Services (DSS) became involved in the case after receiving a neglect report. DSS's investigation revealed that L.M.S.L. was born prematurely at gestation week thirty-four and weighed four pounds, fifteen ounces at birth. Both L.M.S.L. and respondent-mother tested positive for cocaine at the time of L.M.S.L.'s birth. L.M.S.L. was placed on morphine to treat her withdrawal symptoms.

On 16 February 2007, DSS filed a juvenile petition alleging that L.M.S.L. was a neglected and dependent juvenile, and, on 20 February 2007, the trial court entered a nonsecure custody order placing L.M.S.L. in DSS custody. L.M.S.L. stayed in the hospital for a month. After her release, L.M.S.L. was placed with licensed foster parents, one of whom was a registered nurse and would be able to administer L.M.S.L.'s treatment. L.M.S.L. received morphine treatments for eleven months to withdraw from her dependency to cocaine.

The trial court continued nonsecure custody with DSS by order entered 15 March 2007. On 23 March 2007, the trial court entered an order adjudicating L.M.S.L. neglected and dependent by consent of the parties. Respondent-mother admitted to using drugs during her pregnancy, including using cocaine shortly before L.M.S.L.'s birth. Respondent-mother also admitted that she had not received proper prenatal care. Respondent-mother had a few years' history of substance abuse and, at the time of adjudication, had pending charges for possession of methamphetamine.

Respondent-mother entered into an Out of Home Family Services Agreement (the agreement) with DSS on 13 March 2007. The agreement required respondent-mother to: (1) obtain a psychological assessment and follow all recommendations, including individual and/or group therapy; (2) attend parenting classes and earn a certificate for completion; (3) obtain a substance abuse assessment, follow all recommendations from the assessment, and fully cooperate as instructed with DSS's requests for random drug

screens; and (4) maintain gainful employment, show proof of such employment, and maintain a residence that allows for a child's basic needs to be met. Respondent-mother also had a visitation and contact plan with DSS, which allowed for weekly one-hour supervised visits with L.M.S.L., provided that respondent-mother had negative drug screens.

On 15 June 2007, the trial court continued reunification efforts and approved the case plan and visitation plan submitted by DSS. However, on 20 February 2008, the trial court changed the permanent plan to adoption and ordered DSS to cease reunification efforts on 11 March 2008. On 18 March 2008, DSS filed a motion to terminate respondent-mother's parent rights on the following grounds: (1) neglect and (2) willfully leaving the juvenile in foster care for over twelve months without showing reasonable progress in correcting the conditions which led to removal. The motion also sought to terminate the parental rights of L.M.S.L.'s father.

The trial court conducted a hearing on the matter on 7 May 2008. Marcy Mays, a DSS case worker, and Stephanie Johnson, a licensed professional counselor, testified for DSS. Ms. Mays testified that respondent-mother had not met any of the objectives contained in the agreement: (1) she obtained a psychological assessment, but did not follow through on the recommendations; (2) her compliance with required drug screens was very sporadic; (3) she did not finish all the required parenting classes; (4) she obtained a substance abuse assessment, but did not follow through

on the recommendations; and (5) she failed to demonstrate that she could provide for L.M.S.L.'s basic needs by obtaining verifiable employment. Ms. Mays also testified that respondent-mother's visits with L.M.S.L. were very sporadic as a result of her failure to comply with DSS's drug screen requests. Ms. Johnson testified that she administered respondent-mother's substance abuse assessment and recommended group therapy and individual therapy. However, respondent-mother attended only three of twelve group therapy sessions and attended none of the individual therapy sessions.

The trial court concluded that two grounds existed to terminate respondent-mother's parental rights to L.M.S.L.: (1) respondent-mother had neglected the juvenile and continued to neglect her by failing to successfully comply with DSS's reasonable reunification efforts, thus subjecting the juvenile to a substantial risk of continued neglect if she were returned to respondent-mother, and (2) respondent-mother willfully left the juvenile in foster care for over twelve months without showing reasonable progress in correcting the conditions which led to the removal of the juvenile. The court then made an additional dispositional finding of fact and determined that it was in L.M.S.L.'s best interests to terminate the parental rights of respondent-mother. Respondent-mother gave timely notice of appeal.

The trial court also terminated the parental rights of the father on the same grounds, but he does not appeal.

Respondent-mother first argues that the evidence does not support the trial court's conclusion that her parental rights should be terminated on the grounds of (1) neglect and (2) willfully leaving the juvenile in foster care for over twelve months without showing reasonable progress in correcting the conditions which led to the removal. Pursuant to N.C. Gen. Stat. § 7B-1111(a) (2007), a trial court may terminate parental rights upon a finding of one of the ten enumerated grounds. "'So long as the findings of fact support a conclusion [that one of the enumerated grounds exists] the order terminating parental rights must be affirmed.'" *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395-96 (1996)). Although respondent-mother challenges both grounds for termination, "[a] single ground . . . is sufficient to support an order terminating parental rights." *In re J.M.W., E.S.J.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006). Therefore, if we find that the findings of fact support one of the grounds, we need not review the other two. See *Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 426-27.

As an initial matter, we note that although respondent-mother makes a few general references to the findings of fact, she only specifically challenges one finding of fact in her brief. Because respondent-mother has not argued her assignments of error on the remaining findings of fact, we must deem these assignments of error abandoned. *In re Bishop*, 92 N.C. App. 662, 664, 375 S.E.2d 676, 678 (1989) (citing N.C.R. App. P. 28(b)(5)). The remaining

findings of fact are deemed to be supported by sufficient evidence and are binding on appeal. N.C.R. App. P. 28(b)(6); see also *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005).

Respondent-mother contends that a portion of finding of fact number 11 is not supported by clear and convincing evidence. The portion of finding of fact number in question states that "[n]o family members have come forward or been submitted to [DSS] for placement of L.M.S.L." Nonetheless, even assuming that finding of fact 11 is not supported by clear, cogent, and convincing evidence, the trial court's remaining findings of fact are sufficient to support the conclusion that respondent-mother willfully left L.M.S.L. in foster care pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). This ground for termination requires the trial court to find that (1) the parent willfully left the juvenile in foster care for over twelve months and (2) the parent has not made reasonable progress to correct the conditions which led to the removal of the juvenile. *In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005). The following findings of fact address this ground for termination:

7. . . . At birth, L.M.S.L. was premature at 34 weeks gestation and weighed 4 pounds 15 ounces. L.M.S.L. tested positive for cocaine, as did the mother[.] Additionally, the mother had not received proper prenatal care and had used drugs during her pregnancy.

. . .
11. L.M.S.L. took morphine treatments for 11 months to withdraw from her dependency on cocaine. . . .

12. Both parents entered into Out-of-home Family Services Agreements on March 13, 2007. . . .
13. The mother was inconsistent in her completion of her Agreement as follows:
 - a. She completed her psychological evaluation in which the recommendations included that she submit to random drug testing as long as such could be mandated and that she participate in long-term individual counseling. . . . She attended three group therapy sessions and no individual therapy sessions.
 - b. She failed to regularly and consistently submit to random drug screenings using urine or blood samples and refused at times to submit to observed urine sampling. The mother last tested positive on March 30, 2007[,] for methadone. She failed to appear for or provide samples for drug testing on 12 occasions. She tested negative on 7 occasions.
 - c. She completed her substance abuse and mental health assessments in which the recommendations included that she attend 12 group therapy sessions, 3 months of individual anxiety sessions and 6 Narcotics Anonymous sessions. She attended three of the group therapy sessions, none of the individual anxiety sessions and provided no proof of attending any NA sessions. She failed to return for the recommendations in her mental health assessment.
 - d. She was consistent in utilizing her weekly visits with L.M.S.L., however, because of her refusal to submit to drug screenings, she was denied many visits. She attended visits on 13 occasions, being significantly late on two occasions.

- e. She attended some parenting classes, but provided no proof of having graduated.
- f. She lived with her father for awhile until his home burned, then she lived with her mother, where she is currently thought to be living.
- g. She was under an order to pay child support of \$112.00 per month. She is in arrears totaling \$877.00 as of May 5, 2008.

We determine that these findings of fact are sufficient to support the conclusion that respondent-mother willfully left her child in foster care for over twelve months and has not made reasonable progress to correct the conditions which led to removal of the child.

Respondent-mother essentially argues that the trial court relied on the previous neglect and dependency adjudication in terminating her parental rights and, by doing so, ignored the progress she had made. However, we are not persuaded that respondent-mother's limited attempts to improve her circumstances necessitate a finding that the trial court erred in terminating her parental rights. It is well established that, under N.C. Gen. Stat. § 7B-1111(a)(2), "willfulness does not require a showing of fault by the parent." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). "[W]illfulness is not precluded just because respondent has made some efforts to regain custody of the child." *Id.* at 440, 473 S.E.2d at 398; see also *In re Tate*, 67 N.C. App. 89, 94, 312 S.E.2d 535, 539 (1984) ("The fact that

appellant made some efforts within the two years does not preclude a finding of willfulness or lack of positive response.”).

We recognize that respondent-mother made some attempts to correct the conditions which led to removal, but limited attempts to do so do not preclude a finding that grounds for termination exist. See *Oghenekevebe*, 123 N.C. App. at 437, 473 S.E.2d at 397 (finding grounds existed to terminate respondent’s parental rights and noting that respondent failed to show any progress until her parental rights were in jeopardy). Furthermore, respondent-mother’s contention that the trial court relied on the past adjudication of neglect and dependency has no merit. Here, respondent-mother obtained the required assessments, but failed to follow through on the recommendations. She also failed to finish the required parenting classes and failed to demonstrate that she could provide for L.M.S.L.’s basic needs by obtaining verifiable employment. Although respondent-mother had a few negative drug screens, she regularly failed to show up for appointments, failed to produce a specimen at times, and, on at least one occasion, provided a specimen that was too cold. Indeed, respondent-mother’s frequent failure to cooperate with DSS’s drug screening prevented her from visiting L.M.S.L. on numerous occasions. Therefore, we find that the trial court did not err in concluding that grounds existed to terminate respondent-mother’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Next, we turn to respondent-mother's argument that the trial court erred by concluding that it was in the best interests of L.M.S.L. to terminate respondent-mother's parental rights. After an adjudication determining that grounds exist for terminating parental rights, the trial court is required to consider the following factors in determining whether termination is in the juvenile's best interest:

- (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) (2007). We review the trial court's determination that a termination of parental rights is in the best interest of the juvenile for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "Abuse of discretion exists when 'the challenged actions are manifestly unsupported by reason.'" *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004).

Respondent-mother contends that the trial court abused its discretion by failing to consider all of the factors listed in N.C. Gen. Stat. § 7B-1110(a). Specifically, respondent-mother claims that the trial court made no findings regarding respondent-mother's bond with L.M.S.L., relied solely on the guardian *ad litem* (GAL)

report, and failed to consider the likelihood that L.M.S.L. would be returned to respondent-mother. We disagree with respondent's contentions.

The trial court made the following specific dispositional finding in finding of fact number 14:

- a. The licensed foster family, Wayne and Billy Sapp, live in a rural neighborhood. They have no criminal history. Mr. Sapp works for Pepsi Cola and is in good health. Ms. Sapp is a registered nurse, teaches high school and is in good health.
- b. The Sapps have a daughter in college and a daughter in high school.
- c. L.M.S.L. has been well taken care of in the Sapps' home; she has her own bedroom; her social, emotional and physical needs are being met. . . .
- d. The Sapps are willing and capable of providing for L.M.S.L., have the financial means to do so and there are no known barriers to adoption.
- e. The Guardian ad Litem Court Report dated May 6, 2008[,] is incorporated herein by reference as additional findings of fact.

While the trial court's findings focus only on the factors related to the adoptive parents, it is clear that the trial court considered all the statutory factors, namely the bond between respondent-mother and L.M.S.L. To begin, the trial court specifically incorporated the GAL report into the order, which stated: "No clear bond between mother and child. Child and mother have not been together very much." Furthermore, this observation was supported by evidence presented at the hearing. It is undisputed that L.M.S.L. never lived with respondent-mother. It is

also undisputed the respondent-mother only visited L.M.S.L. sporadically, in part due to her failure to comply with DSS's drug screening requirements. In fact, DSS case worker Marcy Mays testified that respondent-mother did not see L.M.S.L. between 30 August 2007 and 10 January 2008, had three visits in January and February 2008, and, as of the date of the hearing, had not seen L.M.S.L. since 12 February 2008. Based on the foregoing, it is clear that the trial court considered the statutory factors.

Moreover, we cannot find any evidence to support respondent-mother's contention that L.M.S.L. would likely be returned to her soon. At the hearing, Ms. Mays also testified that respondent-mother would have to follow up on all the objectives of her services agreement for DSS to consider a trial placement. Respondent-mother had made little progress on the objectives in her agreements in the fifteen months prior to the hearing, and she provided the trial court with no reason to believe that she was on the path to completing them. Accordingly, we find that the trial court did not abuse its discretion by determining that the best interests of the juvenile are served by terminating respondent's parental rights. This assignment of error is overruled.

Affirmed.

Judges McGEE and STROUD concur.

Report per Rule 30(e).