NO. COA09-178

NORTH CAROLINA COURT OF APPEALS

Filed: 21 July 2009

IN THE MATTER OF:
D.W. and S.W.

Mecklenburg County
Nos. 05 JT 1225-26

Appeal by respondent-mother from order entered 27 October 2008 by Judge Hugh B. Lewis in Mecklenburg County District Court. Heard in the Court of Appeals 29 June 2009.

J. Edward Yeager, Jr., for petitioner-appellee Mecklenburg County Department of Social Services.

Don Willey, for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by Katherine E. Ross, for Guardian ad Litem.

MARTIN, Chief Judge.

Respondent-mother appeals from the district court's order terminating her parental rights to her fifteen-year-old daughter, S.W., and her seven-year-old son, D.W. After careful review, we affirm.

On 13 December 2005, the Mecklenburg County Department of Social Services ("DSS") filed a juvenile petition alleging that three of respondent-mother's children were neglected and dependent juveniles. S.W. was twelve years old at the time, and D.W. was four years old at the time. Her other son, T.W., who was fourteen years old at the time, was also a subject of the petition. The

petition alleged that DSS had been involved with the family since 1991 and had received several reports of improper discipline. The petition alleged that T.W. was on juvenile probation for theft of a motor vehicle and had recently been charged for possession with intent to sell and distribute cocaine. As to S.W., the petition alleged that respondent-mother failed to provide S.W. with necessary medical treatment. Finally, the petition alleged that, in October 2003 and in April 2005, DSS had received reports that D.W. was found wandering from home without supervision. On 9 December 2005, DSS received a third report that D.W. was wandering from home. On this occasion, a police officer found D.W. approximately 400 feet from home without a coat. When the officer asked respondent-mother where D.W. was, she shrugged and responded that she did not know. The officer arrested respondent-mother for criminal child neglect. Respondent-mother then refused to be handcuffed and assaulted the officer. Pursuant to a nonsecure custody order, the trial court gave custody of D.W., S.W., and T.W. to DSS, and the children were placed in foster care.

Following a hearing on 17 February 2006, the trial court entered an order adjudicating T.W. and D.W. neglected and dependent and adjudicating S.W. dependent. The trial court conducted a dispositional hearing on 29 March 2006. Following the hearing, the trial court entered an order which kept custody of the children with DSS, but allowed respondent-mother supervised visitation. Respondent-mother was also ordered to submit to a parenting

capacity evaluation and to comply with her family services agreement.

The trial court conducted a review hearing on 28 June 2006, and found that respondent-mother was inappropriate during visitation with the children and failed to maintain weekly contact with the children. Therefore, the trial court ceased respondent-mother's visitation with the children, relieved DSS of reasonable efforts toward reunification, and changed the case plan to guardianship. In a permanency planning order filed on 13 September 2006, the trial court maintained the permanent plan of guardianship.

Over the next two years, the trial court conducted several review hearings. By January 2007, respondent-mother completed her parenting capacity evaluation, but she was not maintaining contact with DSS. Additionally, DSS did not know whether respondent-mother was participating in therapy, as she had refused to participate in the past. The trial court interviewed the children in chambers at a review hearing on 9 May 2007. Following the hearing, the trial court permitted supervised visitation between respondent-mother and D.W., but did not reinstate visitation with S.W.

The trial court held another permanency planning hearing on 4 October 2007. By order entered 24 October 2007, the court changed the permanent plan to adoption and authorized DSS to file a petition to terminate respondent-mother's rights to S.W. and D.W. At this point, T.W. was no longer a subject of the juvenile petition. After being placed in a foster home, T.W. apparently ran

away and had been missing since September 2006. DSS suspected that respondent-mother was harboring T.W. and also suspected that she had a role in T.W.'s failure to appear in juvenile court. Based on T.W.'s age and refusal to be placed in a foster home, DSS declined to pursue the termination action with respect to T.W. and returned him to respondent-mother's custody.

On 4 January 2008, DSS filed petitions to terminate respondent-mother's parental rights to D.W. and S.W. DSS also sought to terminate the parental rights of the children's purported and/or unknown fathers. DSS alleged the following grounds for termination: (1) neglect; (2) willfully leaving the children in foster care for more than twelve months without showing reasonable progress to correct the conditions that led to removal; and (3) dependency.

The trial court conducted a termination hearing on 29 May 2008, 17 July 2008, and 24 September 2008. During the hearing, DSS called five witnesses to testify. The first witness was Max Nunez, a psychotherapist who completed respondent-mother's parenting capacity evaluation. The second witness was Valerie Miller, a licensed clinical social worker, who provided therapy to the children. The last three witnesses were DSS social workers who had worked with the family. Respondent-mother did not introduce any evidence at the termination hearing. Following the hearing, the trial court entered an order on 27 October 2008 terminating respondent-mother's parental rights to S.W. and D.W. based on the three grounds alleged by DSS. The trial court also terminated the

parental rights of the purported and/or unknown fathers of S.W. and D.W. From this order, respondent-mother appeals.

Proceedings to terminate parental rights are conducted in two parts: (1) the adjudication stage, governed by N.C.G.S. § 7B-1109(f), and (2) the disposition stage, governed by N.C.G.S. § 7B-1110(a). *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003). "In [the adjudication] stage, the burden is on the petitioner to provide 'clear, cogent, and convincing evidence' that the named grounds . . . exist." *In re S.W.*, 187 N.C. App. 505, 506, 653 S.E.2d 425, 425-26 (2007).

Respondent-mother raises only one issue on appeal. She contends that, during the adjudication stage, the trial court improperly shifted the burden of proof onto her in Findings of Fact 50, 51, and 53, and in a portion of Finding of Fact 52. She does not challenge the first portion of Finding of Fact 52, which briefly describes her medical diagnosis as mildly mentally retarded. The challenged findings provide the following:

> 50. The mother offered no evidence she has accepted responsibility for her children being in foster care. She provided no evidence she has changed her methods of discipline and will provide a better environment for S.[W.] and D.[W.] than she provided for her older children.
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> 51. The mother made many loud comments and has [sic] several outbursts during this trial when witnesses testified in ways she disagreed with. Her attorney and Guardian ad Litem had to calm her down. When she was given the opportunity to testify, she declined to testify and did

> not offer any witnesses or evidence on her behalf.
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> 52. . . . She has not shown she has improved her abilities since [D.W. and S.W.] entered custody in December 2005.
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> 53. No program or treatment has been offered or suggested that will alleviate the mother's limitations. The evidence is that her limitations will continue indefinitely.

Respondent-mother appears to suggest each finding should be parsed and reviewed in isolation from the other 60 findings of fact. We decline to do this. Instead, we review these findings in the context of the entire termination order. In this regard, we conclude that DSS proved the existence of grounds for termination by clear, cogent, and convincing evidence and that the trial court did not shift DSS's burden onto respondent-mother. A similar argument was rejected by this Court in *In re Clark*, 72 N.C. App. 118, 125, 323 S.E.2d 754, 758-59 (1984). In *Clark*, the trial court made a finding that "evidence has not been presented to refute the essential allegations contained in the Petition . . . ." *Id.* at 125, 323 S.E.2d at 758. In *Clark*, we determined that the finding was not an improper shifting of the burden, but rather "an accurate statement of the procedural stance of the case. The finding recites only that the respondents did not produce evidence that contradicted the allegations set forth in the petition." *Id.* The instant case presents a similar scenario. Here, after reviewing the findings of fact in their totality, we find that the challenged findings appear to be nothing more than the trial court's observations that respondent-mother failed to present evidence to

rebut DSS's clear, cogent, and convincing evidence that grounds existed. Therefore, the trial court did not improperly shift the burden of proof to respondent.

Furthermore, as the trial court did not improperly shift the burden of proof onto respondent-mother, we conclude that the remaining findings of fact are sufficient to support grounds for termination, independent of the challenged portions. Although respondent-mother assigned error to several other findings of fact, she did not argue any of them in her brief. Therefore, we deem these assignments of error abandoned. *See* N.C.R. App. P. 28(b)(6). The remaining unchallenged Findings of Fact 1-49 and 54-64, and the first part of Finding of Fact 52, are binding on appeal. *See Johnson v. Herbie's Place*, 157 N.C. App. 168, 180, 579 S.E.2d 110, 118, *disc. review denied*, 357 N.C. 460, 585 S.E.2d 760 (2003).

A trial court may terminate parental rights upon a finding of one of the ten enumerated grounds. *See* N.C. Gen. Stat. § 7B-1111(a) (2007). Here, the trial court found that three grounds existed to terminate respondent-mother's parental rights to S.W. and D.W.: (1) neglect; (2) willfully leaving the juveniles in foster care for over twelve months without showing reasonable progress in correcting the conditions which led to the removal; and (3) dependency. Although the trial court found that three grounds exist, "[a] single ground . . . is sufficient to support an order terminating parental rights." *In re J.M.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 grounds. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426-27 (2003).

After reviewing the record, we find that the trial court's undisputed findings of fact are sufficient to support at least one ground for termination. N.C.G.S. § 7B-1111 lists dependency as one of the grounds for terminating parental rights and provides that the trial court may terminate parental rights upon a finding that:

> [T]he parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6). A dependent juvenile is defined as one "in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2007). In determining whether a juvenile is dependent, the trial court is required to "address both[:] (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

Beginning with the first prong, there is ample evidence in the record that respondent-mother failed to provide proper care and supervision for S.W. and D.W. Indeed, the juveniles were originally adjudicated neglected and/or dependent based on the following: (1) D.W. had wandered away from home and was found unsupervised on several occasions, the last occasion resulting in respondent-mother's assault of a police officer; (2) the other child, T.W., was on probation in juvenile court and respondent-mother had condoned T.W.'s breaking of curfew; and (3) respondent-mother failed to provide necessary medical treatment for S.W.'s vision problems. Moreover, respondent-mother failed to maintain contact with DSS, failed to cooperate with DSS after T.W. ran away from his foster home, and failed to regularly visit her children. There is also evidence that S.W. had additional health problems. After S.W. entered foster care, she was encouraged to lose weight because she was diagnosed with borderline type 2 diabetes. When respondent-mother did attend visits, respondent-mother made inappropriate comments to S.W. about S.W.'s weight loss.

The trial court also addressed the likelihood that respondent-mother's inability to provide care or supervision would continue in the future. The trial court found that respondent-mother's inability to provide proper care and supervision for her children was the result of respondent-mother's mild mental retardation. Such a finding is specifically permitted by statute. *See* N.C. Gen. Stat. § 7B-1111(a)(6). In the parenting

capacity evaluation, Mr. Nunez determined that respondent-mother "functions in the range of mild mental retardation." Further, relying on Mr. Nunez's evaluation, the trial court made additional findings regarding respondent-mother's mild mental retardation and her limitations with respect to parenting:

> 17. . . . "It is not likely that she will change her function in any significant manner. Although she has a positive regard and clear affection toward her children . . . her ability to guide, supervise, stimulate, monitor, and set clear limits for them will continue to be limited by her cognitive limitations."
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> 18. Mr. Nunez thought the mother's problems rearing the children would grow more acute as they grew older. "It is a concern that the children will require more guidance, supervision, and creativity as they enter the teenage years and she will be hard pressed to rise to that challenge."
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> 19. The mother would need "considerable help" if the children were returned to her care. "The help that she will need will be direct, hands-on help. It would not be sufficient to teach her more parenting skills because she is limited in how much she could assimilate that information."
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> 20. . . . [T]he mother has "a superficial, concrete understanding of her parenting obligations" and "she believes love is all the children need. S.[W.] admitted she would not have very much guidance or stimulation in her mother's home." S.[W.] made a comment that she wanted "to change the family cycle . . . everyone in our family is pregnant" (referring to her older sisters and mother). "It is not likely [respondent-mother] could inspire S.[W.] to other alternatives."
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> 21. "D.[W.] will need firm limits and guidelines and creative stimulation to direct his energy in positive ways.

> [Respondent-mother] is limited in that she seems to know how to take away privileges and how to ground him, but little else."
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> . . . .
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> 24. Mr. Nunez noted that mother did not accept much of the responsibility for her children being in [DSS] custody. She did not see that she had done anything wrong and thought that other people were lying to the authorities about her.
>
> 25. Services had been tried before the children entered custody. The mother was given in-home parenting services and classes by [a social worker] in the months before the juvenile petition was filed.

These findings of fact are sufficient to establish that respondent-mother is incapable of providing for the proper care and supervision of her children and that there is a reasonable probability that such inability will continue for the foreseeable future. Therefore, we conclude that the first prong is satisfied.

Finally, the trial court also made sufficient findings as to the second prong, that respondent-mother lacked an appropriate alternative child care arrangement. The record demonstrates that DSS explored the possibility of alternative placements, but could not find an appropriate one. Findings of Fact 43 and 46 address this issue:

> 43. No other relative stepped forward to offer placement for the children.
>
> . . . .
>
> 46. Both putative fathers are in prison, but neither has taken any step to establish or maintain any contact with their child. . . . No other paternal relative

> has stepped forward to offer placement for either child in the father's absence.

Thus, we conclude that the trial court made sufficient findings which addressed both respondent-mother's ability to provide care or supervision for her children and the availability to the parent of alternative child care arrangements. Accordingly, we find that the trial court's findings of fact support the dependency ground for termination.

Affirmed.

Judges and ELMORE concur.

Report per Rule 30(e).