NO. COA09-244

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

IN THE MATTER OF:

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| I.H. and E.H., Minor Children. | Harnett County Nos. 06 J 224-25 |

Appeal by respondent mother from order terminating her parental rights entered 19 December 2008 by Judge George R. Murphy in Harnett County District Court. Heard in the Court of Appeals 8 June 2008.

*E. Marshall Woodall and Duncan B. McCormick, for petitioner-appellee Harnett County Department of Social Services.*

*Lisa Skinner Lefler, for respondent-appellant mother.*

*Pamela Newell Williams, for the Guardian ad Litem to the respondent-appellee minor children.*

ERVIN, Judge.

Danielle C. (Respondent Mother) appeals from an order terminating her parental rights in her minor children, I.H. and E.H. (collectively "the children").[1] After careful consideration of the record and briefs, we conclude that the trial court's findings of fact support its determination that grounds exist to terminate Respondent Mother's parental rights and that the trial

[1] In order to protect their privacy and for ease of reading, I.H. will be referred to as Isaac and E.H. will be referred to as Ethan throughout the remainder of this opinion.

court did not abuse its discretion by determining that it is in the children's best interests for Respondent Mother's parental rights to be terminated. Accordingly, we affirm the trial court's order terminating Respondent Mother's parental rights.

On 17 October 2006, the Harnett County Department of Social Services (HCDSS) filed petitions alleging that the children were neglected and dependent juveniles. Immediately prior to the filing of the petitions, Respondent Mother and the children were passengers in an automobile driven by Respondent Mother's boyfriend. While passing through Dunn, Respondent Mother's boyfriend became involved in a high speed chase with law enforcement officers and ultimately crashed into a telephone pole, causing the automobile to explode and burn. Respondent Mother was hospitalized as a result of injuries she sustained in the accident, leading to the placement of Isaac and Ethan in HCDSS custody. Respondent Mother was charged with, and subsequently pled guilty to, two counts of misdemeanor child abuse for having allowed the children to be in a vehicle that was involved in a police chase resulting in an accident in which the children were injured.

After a hearing held on 28 November 2006, the court entered an order on 9 February 2007 adjudicating Isaac and Ethan to be neglected and dependent juveniles. At the dispositional stage of the proceeding, the court continued custody of the children with HCDSS and adopted a plan of reunification with Respondent Mother. On 12 October 2007, the court entered a permanency planning order providing that HCDSS would cease reunification efforts, that

visitation between Respondent Mother and the children would cease, and that the permanent plan for the children be changed from reunification with Respondent Mother to adoption. At that time, the court found that Isaac and Ethan had been in foster care for nearly one year and that return of the children to Respondent Mother's custody would be contrary to their best interests due to Respondent Mother's pending forgery and uttering charges.

HCDSS filed a motion to terminate respondent's parental rights in Isaac and Ethan on 28 November 2007. HCDSS' motion to terminate respondent's parental rights came on for hearing before the trial court on 18 July 2008, 22 August 2008, and 7 November 2008. On 19 December 2008, the trial court entered an order terminating Respondent Mother's parental rights in Isaac and Ethan. In its termination order, the trial court concluded that grounds for the termination of Respondent Mother's parental rights in the children existed in that Respondent Mother: (1) neglected the children and that there was a likelihood that the neglect would continue if the children were returned to Respondent Mother's care and (2) willfully left the children in foster care for more than twelve months without showing to the satisfaction of the court that, under the circumstances, reasonable progress had been made in correcting those conditions which led to the removal of the children. After determining that Respondent Mother's parental rights in the children were subject to termination pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) and 7B-1111(a)(2), the trial court further concluded that the children's best interests would be served by the

termination of Respondent Mother's parental rights. Respondent Mother noted an appeal to this Court on 23 December 2008.

Although Respondent Mother has assigned error to the trial court's Finding of Fact Nos. 16, 55, 60, and 63 and although Respondent Mother purports to bring these assignments of error forward in her brief, Respondent Mother does not advance a specific argument, supported by references to authority and the record, to the effect that any of these findings of fact lack sufficient record support or are otherwise erroneous. Instead, Respondent Mother simply makes a broadside argument that the trial court's findings of fact are insufficient to support its conclusions of law. It is well established that "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C.R. App. P. 28(c)(1); *see also In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 405 (2005) (concluding findings of fact were binding on appeal where respondent had abandoned assignments of error challenging those findings when she "failed to specifically argue in her brief that they were unsupported by evidence"). Accordingly, we conclude that Respondent Mother has abandoned her assignments of error challenging Finding of Fact Nos. 16, 55, 60, and 63, so that our review of the trial court's termination order is limited to a determination of "whether the trial court's findings support its conclusion[s] of law." *In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001).

Respondent Mother first argues that the trial court erred in terminating her parental rights in Isaac and Ethan on the grounds of neglect as authorized by N.C. Gen. Stat. § 7B-1111(a)(1) because the factors that led to the children's removal from Respondent Mother's custody no longer exist and because Respondent Mother had complied with the court's orders and her agreement with the HCDSS. As a result, Respondent Mother argues that the evidence that she had made changes and improvements precluded the trial court from making the required finding that Respondent Mother would be likely to neglect Isaac and Ethan again were they returned to her care. *In re Ballard*, 311 N.C. 708, 714-15, 319 S.E.2d 227, 231-32 (1984) *see also In re Schermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003). Respondent Mother also contends that the trial court erred by concluding that Respondent Mother's parental rights in the children were subject to termination because she had willfully left the children in foster care for more than twelve months without making reasonable progress, under the circumstances, in correcting those conditions which led to their removal as authorized by N.C. Gen. Stat. § 7B-1111(a)(2). In both instances, Respondent Mother argues on appeal that, given the evidence of the changes and improvements that she had made in her own life, the trial court's findings of fact were insufficient to support its conclusion that grounds for terminating Respondent Mother's parental rights existed. After careful consideration of Respondent Mother's arguments, we disagree.

A trial judge is authorized to terminate parental rights where:

> The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 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. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2007). In determining whether a parent has acted "willfully" as that term is used in N.C. Gen. Stat. § 7B-1111(a)(2), this Court has held:

> A finding of willfulness does not require a showing of fault by the parent. Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort. A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children.

*In re O.C.*, 171 N.C. App. 457, 465, 615 S.E.2d 391, 396 (citations and quotation marks omitted), *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005). In this case, the trial court concluded that grounds existed to terminate Respondent Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) because Respondent Mother "was given the opportunity to be reunited with the juveniles; her failure to take advantage of those opportunities constituted willfulness." As a result, the principal issue we must address in connection with this aspect of the termination order is whether the trial court's findings of fact adequately support this determination.

In its termination order, the trial court made the following findings of fact relevant to the issue of whether Respondent Mother's parental rights in the children were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2):

> [14]c. Immediately prior to the time of the filing of these proceedings (October 17, 2006), the juveniles were passengers in an automobile being driven by the mother's boyfriend. While passing through the City of Dunn, Harnett County, North Carolina, at a high rate of speed, the automobile was involved in a collision wherein it crashed, exploded, and burned. Following the wreck, the mother was hospitalized and later incarcerated and the juveniles were taken into DSS care.
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> [14]i. A short period of time before the above mentioned wreck, the mother and the juveniles left Florida in an automobile with the mother's boyfriend. The mother and her boyfriend intended to travel to New York. At the time, the boyfriend was wanted by authorities on outstanding warrants. After leaving on the trip, the boyfriend engaged in a high speed chase from police officers prior to reaching North Carolina. At the time of the wreck, the boyfriend was engaged in a high speed chase in the City of Dunn, which ended in the above mentioned wreck.
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> 21. . . . . Immediately following the wreck, the mother was arrested and the juveniles had no one to take their care and supervision. With the consent of the mother, the court held hearings keeping the juveniles in DSS custody and care, adjudicating them neglected and dependent and continuing them in custody at review hearings.
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> 23. On or about October 17, 2006, respondent mother was arrested and placed in the Harnett County jail on charges of violating [N.C. Gen. Stat. §] 14-318.2 (misdemeanor child abuse) by creating and allowing a substantial risk of

physical injury to each of the juveniles herein on October 17, 2006, by having them in a vehicle involved in a police chase that resulted in an accident whereby the juveniles were injured. Upon the mother's plea[] of guilty to said charges (one charge for each juvenile) on November 16, 2006, the court entered a verdict of guilty and sentenced the mother to be imprisoned for a term of 45 days in custody in each case, with the sentence for one charge to be served at the expiration of the other–a total custody period of 90 days with a credit of 30 days already served. The mother was released from custody during the month of January 2007.

. . .

31. While the mother's assigned social worker, Ms. Amanda Messer, was out of work on sick leave during July 2007, the mother talked with a DSS co-worker to notify DSS of her intention to return to Florida. . . . She (the mother) had attempted to obtain a North Carolina driver's license but was denied a license because of unresolved matters in Florida. After investigation, the mother explained to Ms. Messer that she had traffic violations in Florida and had been advised that in order to resolve those violations she would have to return to Florida to serve a 45 or 50 day sentence. The mother continued communication with Ms. Messer and sent e-mail letters in late August and early September 2007. During the time . . . the mother was in Florida, she discovered new criminal charges against her were pending in Harnett and Wilson Counties in North Carolina. In communications with Ms. Messer, the mother discussed the possibility of remaining in Florida and inquired as to how she might get her children back to her in Florida. Ms. Messer advised that a request for a home study for the mother through the Interstate Compact for the Placement of Children (ICPC) would be made. During that communication, the mother stated that she had more support in Florida, she had obtained two (2) jobs at that time and that she had applied for housing in Florida. Subsequently the mother returned to North Carolina on or about September 7 2007. . . .

32. Shortly after arriving in North Carolina (September 7, 2007), the mother was arrested and incarcerated for a few days in the Wilson County, North Carolina, jail.

33. On or about July 10, 2007, the mother was charged with criminal offenses in Harnett County, North Carolina, of forgery, false making and counterfeiting checks and did conspire with others to commit said felony. On December 11, 2007, upon payment by the mother of $450 as restitution to the victim, the prosecutor dismissed the charges.

34. At approximately the same time in July 2007, the mother was charged in Wilson County, North Carolina, with forgery, false making and counterfeiting of checks. Later, the mother plead guilty to charges in Wilson County on or about February 26, 2008, and received a suspended sentence and [was] placed on one (1) year's supervised probation on condition that she pay costs and make restitution. The mother paid a total of $913.87 and she was placed on unsupervised probation on or about November 5, 2008, by [t]he Honorable E. Lynn Johnson.

35. The mother met the persons involved with her in the criminal activity above mentioned while she was incarcerated in the Harnett County jail from October 17, 2006 to January 2007.

36. The above mentioned criminal charges were pending in Harnett and Wilson Counties until December 2007.

. . .

[40]e. The mother previously entered into a family services case plan (FSCP) with DSS and had complied with the provisions thereof until her incarceration in Florida. Since that time, there has been no compliance with the FSCP. . . .

. . .

43. The mother last visited with the juveniles on July 13, 2007. The final visit as scheduled for the mother was never held. The evidence before this court discloses that the parties failed to communicate a definite

> place of the visit. The parties were unable to work out a re-scheduled visitation time. . . .
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> 45. The social worker discussed with the mother on several occasions the parental responsibility to support the juveniles. The social worker referred the mother to contacting the child support agency relative to this responsibility to include making an appointment with the DSS person in charge of support arrangements. The mother failed to keep the appointment.
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> 49. The juveniles have been in foster care from October 17, 2006, until the date of the hearing of this motion and DSS has sustained the cost of their care and maintenance during the entire period.
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> 55. Although the mother has made some progress in maintaining employment and housing, she has failed to demonstrate parental responsibilities of supporting the juveniles by leaving their support and parenting to others and making poor parenting decisions as disclosed by the foregoing facts, thereby creating instability for the juveniles as they have experienced throughout their lives with the mother and father. The juveniles have now been out of the mother's custody and home because of the mother's poor parenting decisions for approximately thirteen (13) months which period of time is currently unreasonable; there is no assurance that a reunification of the juvenile[s] within a reasonable time could be made by again initiating efforts at a plan of reunification.

We conclude that these findings of fact, which are binding upon this Court on appeal, adequately support the trial court's conclusion that Respondent Mother's parental rights in Isaac and Ethan are subject to termination because Respondent Mother willfully left the children in foster care for more than twelve

months without showing to the satisfaction of the court that, under the circumstances, reasonable progress had been made in correcting those conditions which led to the removal of the children. As the findings of fact quoted above set forth in considerable detail, the children have been in foster care since being taken into the custody of the HCDSS on 17 October 2006, a period that exceeded one year as of the date of the filing of the petition. In addition, the trial court's findings of fact demonstrate that Respondent Mother has had repeated encounters with the criminal justice system since the children were taken from her custody, a set of circumstances which is a source of particular concern given the nature of the events that led to the removal of the children from her custody and control in the first place. Furthermore, the trial court's findings of fact establish that Respondent Mother has not taken the initiative to provide support for her children, has not visited with Isaac and Ethan since returning to Florida in mid-2007, and has not made any progress implementing her family services case plan since her incarceration in Florida in 2007. The trial court's findings of fact show that, throughout the period of time during which the HCDSS has had custody of Isaac and Ethan, Respondent Mother continued to make poor parenting decisions and failed to demonstrate that she was capable of supporting and providing the stability needed by the children. Although Respondent Mother has had some successes in obtaining and keeping employment and housing, the trial court could properly conclude that these accomplishments are simply outweighed by all of the

other factors cited in the trial court's findings of fact. As a result, the trial court's findings of fact adequately support its conclusion that Respondent Mother's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Because we find grounds for termination were properly established pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), we need not address Respondent Mother's further arguments regarding the appropriateness of the trial court's decision that her parental rights in the children were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). *See In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986) (once one statutory ground for termination is established, this Court need not address assignments of error challenging other grounds).

Respondent Mother next argues that the trial court erred in concluding it was in the best interests of the children that her parental rights be terminated. Respondent Mother contends she has been and is now ready to be a loving mother to Isaac and Ethan and that the trial court abused its discretion in terminating her parental rights. We disagree.

At the dispositional phase of proceedings in which the termination of parental rights is at issue, the trial court is required to "determine whether terminating the parent's rights is in the juvenile's best interest" in light of the following considerations:

> (1) The age of the juvenile.
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> (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.
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> (4) The bond between the juvenile and the parent.
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> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
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> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2007). "The decision to terminate parental rights is vested within the sound discretion of the trial [court] and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citing *In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791 (2005)).

The trial court addressed each of the factors set out in N.C. Gen. Stat. § 7B-1110(a) in its order terminating respondent's parental rights in Isaac and Ethan and found that:

> 61. The juveniles are in need of a continued structured and stable environment. In the environment in which the juveniles have lived during foster care, the behaviors of both juveniles have improved; [Ethan] has made extremely positive improvement in school and in his relationship with others.
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> 62. The juveniles are healthy and adoptable.
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> 63. Termination of the rights of the parents would aid in realizing a stable environment for the juveniles.

Given Respondent Mother's inability to complete her family services case plan, her repeated problems with the criminal justice system,

her failure to demonstrate the ability to support the children, and her persistent creation of instability for the children due to her poor parenting decisions, we cannot conclude that the trial court's decision that Respondent Mother's parental rights in Isaac and Ethan should be terminated was manifestly unsupported by reason. While Respondent Mother may have made some progress toward reunification with her family, the trial court clearly remained unconvinced that she was capable of providing the support and stability needed by the children. The mere fact that the Respondent Mother professes love for Isaac and Ethan and has taken some steps to improve her condition is not, given the evidence deemed to be credible by the trial court, sufficient to require an appellate reversal of the trial court's decision that the best interests of the children would be served by the termination of Respondent Mother's parental rights. As a result, we hold that the trial court did not abuse its discretion by concluding that it was in the best interests of the children to terminate Respondent Mother's parental rights.

Having carefully considered all of Respondent Mother's challenges to the trial court's order, we find that the trial court's findings of fact, which have not been challenged as insufficient on appeal, support its conclusion that grounds for termination of Respondent Mother's parental rights existed and that the trial court did not abuse its discretion in concluding that Respondent Mother's parental rights in Isaac and Ethan should be

terminated. As a result, we conclude that the trial court's termination order should be affirmed.

Affirmed.

Judges Robert N. Hunter, Jr., and Beasley concur.

Report per Rule 30(e).