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NO. COA09-283

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

IN THE MATTER OF:

R.F., D.B.,  
and B.B.

Mecklenburg County  
Nos. 05 JT 175  
06 JT 372-73

Appeal by respondent from order entered 19 December 2008 by Judge Louis A. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 29 June 2009.

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

*Pamela Newell Williams, for Guardian ad Litem, respondent-appellee.*

*Hartsell & Williams, P.A., by Christy E. Wilhelm, for respondent-appellant.*

ELMORE, Judge.

Respondent-mother appeals from an order terminating her parental rights to her children, R.F., D.B., and B.B. For the following reasons, we affirm.

Respondent-mother is the biological mother of R.F., D.B., and B.B. Mr. B is the father of D.B. and B.B.; paternity of R.F. has not been established. On 30 March 2006, the Mecklenburg County Department of Health and Human Services (DSS) filed a juvenile petition alleging that R.F., D.B., and B.B. were neglected and

dependent juveniles. DSS took custody of R.F., D.B., and B.B. due to unstable and inappropriate housing, parenting deficiencies, and lack of mental health treatment for both respondent-mother and Mr. B. DSS was previously involved with respondent-mother regarding unsanitary and unsafe living conditions.

Respondent-mother and Mr. B. entered into a mediation agreement and a mediated case plan with DSS and the Guardian *ad Litem*. Respondent-mother and Mr. B agreed to the allegations supporting the juvenile petition and agreed to: (1) submit to a substance abuse evaluation; (2) attend group therapy; (3) participate in a parental capacity evaluation; (4) attend parenting classes; and (5) obtain and maintain legal employment to earn sufficient income to care for the children. At an adjudication hearing, the trial court adopted the mediation agreement and mediated case plan. By order entered 19 May 2006, the trial court adjudicated the children neglected and dependent juveniles.

The trial court held a permanency planning hearing on 17 March 2007. By order filed 20 March 2007, the trial court found that neither respondent-mother nor Mr. B. had made substantial progress toward reunification and thus changed the permanent plan for the children to adoption. DSS initially filed a petition to terminate the parental rights of respondent-mother and Mr. B. on 17 May 2007, and the trial court terminated their parental rights on 18 January 2008. DSS subsequently filed a motion in the cause seeking to vacate the termination order. The trial court allowed

the motion, vacated the termination order, and ordered the goal for the children to remain adoption.

On 18 May 2008, DSS filed another petition to terminate the parental rights of respondent-mother, Mr. B., and R.F.'s putative father. DSS alleged that grounds existed to terminate the parental rights of respondent-mother under N.C. Gen. Stat. § 7B-1111(a)(1) (neglect); N.C. Gen. Stat. § 7B-1111(a)(2) (willfully left the child in foster care or placement outside the home); and N.C. Gen. Stat. § 7B-1111(a)(3) (failure to pay a reasonable portion of the cost of care for the child). By order filed 19 December 2008, the trial court concluded that grounds for termination of respondent-mother's parental rights existed under N.C. Gen. Stat. § 7B-1111(a)(1) and (2). The trial court further concluded that it was in the children's best interest to terminate respondent-mother's parental rights; she now appeals. The trial court also terminated the parental rights of Mr. B and of R.F.'s putative father, neither of whom appeals.

Respondent-mother first contends that the trial court erred by concluding that sufficient grounds existed to terminate her parental rights. We note as a preliminary matter that, although the trial court concluded that grounds existed pursuant to both sections 7B-1111(a)(1) and (2), it is dispositive that the evidence is sufficient to support termination of respondent-mother's parental rights under section 7B-1111(a)(2). See *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (a finding of one

statutory ground is sufficient to support the termination of parental rights).

Under section 7B-1111(a)(2) of the North Carolina General Statutes, a court may terminate parental rights on the ground that "[t]he 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." N.C. Gen. Stat. § 7B-1111(a)(2) (2007). The twelve-month period for the evaluation of reasonable progress under section 7B-1111(a)(2) is not limited to the twelve months immediately preceding the filing of the petition. *In re Pierce*, 356 N.C. 68, 75, 565 S.E.2d 81, 86 (2002). "[W]illfully" leaving the juvenile constitutes "something less than willful abandonment" and "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). This ground may exist when the parent has made some attempt to regain custody of the child but has failed to show reasonable and positive progress. *In re Nolen*, 117 N.C. App. 693, 699-700, 453 S.E.2d 220, 224-25 (1995).

To support its conclusion that respondent-mother did not make reasonable progress, the trial court made the following findings in its termination order:

17. That [R.F.], . . . D.B. Jr.,<sup>1</sup> and B.L.B. were returned to the Petitioner's custody on

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<sup>1</sup>The trial court refers to D.B. as "D.B. Jr." and to B.B. as "B.L.B." throughout the order.

March 30, 2006[,] pursuant to a Nonsecure Custody Order for issues that the Petitioner presumed were addressed. [R.F.], D.B. Jr., and B.L.B. have remained in the Petitioner's custody since March 30, 2006. When the juveniles were returned to the Petitioner's custody, there was no electricity in the house. The electrical box was removed by Duke Power. The furniture was piled in one corner of the room; the family said this was because they were packing to leave. These conditions were disturbing because the family previously lived in a horrific house and moved into this house with YFS's help. It was not in this condition when they moved in several months ago. The mother states they encountered problems with the house. At that time, the primary issues were an inability to maintain permanent, stable, and appropriate housing; [the respondent father]'s substance abuse problems; [the] respondent parents'<sup>2</sup> inability to meet the juveniles' needs; economic struggles which predated the juveniles move to the respondent mother's home; lack of parenting skills; and the respondent parents' lack of mental health treatment.

18. That [R.F.], B.L.B., and D.B. Jr., were adjudicated neglected and dependent by an order entered on May 19, 2006.

19. That on May 19, 2006, a Dispositional Hearing was held immediately following the Adjudicatory Hearing. At that point, the Court adopted a mediated case plan detailing the steps needed to reunify the juveniles with the respondent parents. The case plan identified several issues that the respondents would need to accomplish in order to have the juveniles returned to their care. . . .

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24. That the respondent mother was also required to attend and participate in

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<sup>2</sup>Mr. B and Tom F. - a.k.a. John Doe, father of R.F. - were parties to the action below. When the trial court refers to "respondent parents," it is referring to respondent-mother and Mr. B.

individual therapy sessions. Ms. Avery, an outpatient psychotherapist with Carolinas Medical Center-Randolph Behavioral Health Center (hereinafter referred to as "BHC"), provided therapeutic services to the respondent mother beginning in October 2006, as a result of a referral from the BHC Medication Clinic. These sessions were at least 1 hour.

25. That the respondent mother's Axis I "working" diagnosis is Bi-Polar Affective Disorder which includes depression and episodes of mania. The respondent mother's diagnosis did not change while attending therapy with Ms. Avery. Ms. Avery testified, which the Court also finds, [that] the respondent mother's prognosis is guarded. It is guarded because bi-polar disorder is a lifelong struggle with relapses even though the individual wants to improve. Treatment for this type of disorder requires consistent therapy and medication. Ms. Avery testified, which the Court adopts, [that] the respondent mother would need continued therapy.

26. That [the respondent mother]'s therapeutic goals were to address the issues surrounding the loss of the juveniles; develop a plan and or skills to assist her with the case plan; develop coping skills to address her depression; develop stress management skills, and addressing her suicidal ideation. Ms. Avery testified, and the Court finds that [the respondent parents] provided her with some of the case plan components. Specifically, they told Ms. Avery that they were required to obtain/maintain housing, maintain sufficient income to meet the juveniles' needs; participate and complete parenting classes; complete a Parenting Capacity Evaluation; and the respondent father remaining clean and sober. She worked with the respondent parents on ways to comply with the court adopted mediated case plan, re-establish their household, re-establishing their financial base, and addressing relationship issues.

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38. That Ms. Avery testified, which the Court also finds, that [the respondent mother] did not complete the therapeutic goal of addressing issues related to the loss of her children. They did not accomplish the therapeutic goal of developing a plan to comply with the case plan. The therapist offered budgeting assistance to the [respondent parents]. However[,] they did not make any progress in this area. At the time Ms. Avery closed the respondent mother's case, [the respondent mother] was no longer reporting suicidal ideation. However, Ms. Avery testified she was concerned because [the respondent mother] was prescribed antidepressant medication but had missed some medication clinic appointments. [The respondent mother] did not complete the established therapy goals. [The respondent mother] failed to comply with this part of the case plan.

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40. That [the respondent mother] was not successfully discharged from individual therapy sessions with Mr. Avery.

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43. That [the respondent mother] agreed to participate in the M.A.P. program. Ms. Gantt testified this case plan objective was added to provide [the respondent mother] with support for her medical condition. [The respondent mother] executed a release to allow Ms. Gantt to monitor her progress. She did not participate in services offered by M.A.P. Therefore, the court cannot find that [the respondent mother] successfully completed this aspect of her case plan.

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45. That in order to be reunified with the juveniles, [respondent parents] were required to participate in, complete, and follow the recommendations of a Parenting Capacity Evaluation. The evaluation would have identified deficits in the respondent parents' parenting abilities. The respondent parents attended some of the scheduled sessions. Dr.

Jenny Poston was the assigned parenting capacity evaluator.

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52. That [the respondent mother] appeared for her January 11, 2007, appointment with Dr. Poston. In this appointment, [the respondent mother] informed Dr. Poston that she separated from [the respondent father] because "he was doing drugs, he won't work. I was tired of the cussing, the screaming." [The respondent mother] also informed Dr. Poston that she minimized [the respondent father]'s substance abuse problem and verbal abuse in the home. Dr. Poston told the respondent mother if she failed to follow the evaluator's instructions, then the evaluation would be terminated. [The respondent mother] did not appear on January 25, 2007, the next scheduled appointment. Thereafter, Dr. Poston terminated the parenting capacity evaluation. [The respondent mother] has not completed this case plan objective.

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54. That because of the respondents' actions and in spite of the assistance from Dr. Poston, [the respondent parents] failed to complete the Parenting Capacity Evaluation. Consequently, the Court could not obtain recommendations from the Parenting Capacity Evaluation which would have been helpful in identifying additional services to assist the [respondent parents].

55. That [the respondent parents] were required to complete parenting classes and to demonstrate the skills learned from the parenting classes. According to Ms. Gantt, [the respondent parents] were not able to appropriately and consistently demonstrate the skills learned from the parenting classes. Specifically, Ms. Gantt was concerned because of [the respondent parents'] need for redirection of juveniles' behavior during the visits; the topics of conversation the respondents discussed with the juveniles; and the respondent parents' inability to manage the juveniles' behaviors during the visits.



The social worker assistant had to redirect the respondent parents during these visits. Ms. Dortche testified, and the Court finds, that the respondent parents would initiate some action after the social worker redirected the respondent parents. The respondent parents were not able to demonstrate, to the social worker assistant's satisfaction, an ability to manage the juveniles. The respondent parents' ability to manage the juveniles during the visits did not improve.

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63. That [the respondent parents] were required to obtain and maintain stable housing. Throughout the case, [the respondent parents] continued to have problems with maintaining safe, stable and appropriate housing. The intent behind the case plan objective of "safe and appropriate housing" is to assist the parent in obtaining a housing situation that cannot be terminated due to circumstances outside of the parent's control; for example, having someone else control the lease and having the ability to exclude the parent from residing in the house. Therefore, the Court cannot find that [the respondent parents] successfully completed this case plan objective.

64. Since March 2006, when the juveniles were placed in the Petitioner's custody, [the respondent parents] have not obtained or maintained independent housing.

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71. That currently, the lack of safe, stable, and appropriate housing remains an issue. At the time of the termination hearing, they have not maintained safe, stable and appropriate housing. Given the respondent parents lack of progress on their case plan, this situation is likely to continue indefinitely.

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82. That the Petitioner offered several services to assist the respondent parents with complying with the case plan. The Petitioner provided the respondent parents with bus

passes. The Petitioner arranged supervised visits for the family. YFS referred the juveniles to therapy. Ms. Gantt provided the respondent parents with contact information for Charlotte Area Fund to assist with financial management. Ms. Gantt met with [the respondent parents] on a monthly basis to discuss the case plan. . . . She made efforts to contact the paternal grandmother to explore possible placement. Due to the respondent parents' lack of progress on the case plan, Ms. Gantt was not able to refer [the respondent parents] to a Budget or Financial Management program. [The respondent parents] previously received budget and financial management services the first time the juveniles were placed in the Petitioner's custody.

83. That the respondent parents were required to maintain contact with the Petitioner. . . . [The respondent parents] failed to maintain consistent contact with the Petitioner.

84. That [the respondent parents] consistently failed to follow through with many of the offered services. Essentially, the parents cooperate with service providers during crisis points, but then fail to follow through with recommendations to avoid future emergencies. This pattern of behavior was demonstrated with the FIRST program, PCE, individual therapy, visit recommendations, housing assistance, therapy, and budgeting. The respondent parents accessed services from Mr. Davis. Later, Mr. Davis lost contact with [the respondent parents]. This pattern continued throughout the time the juveniles were in custody.

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86. That [the respondent parents] were able to articulate the case plan requirements for regaining custody of the juveniles. The Court finds that willfulness not poverty caused the respondent parents' failure to comply with the case plan.

87. That there is no evidence that the respondent mother made any significant progress since the juveniles were placed in

custody in 2006. There was no progress with mental health treatment, therapeutic goals, or meeting her needs.

88. That there was no concrete progress on maintaining housing, paying for food, and meeting the [respondent parents'] individual needs. The [respondent parents] have not demonstrated an ability to maintain their finances or appropriately budget their finances. Additionally, they were not able to demonstrate appropriate parenting skills. All of these items were needed in order to reunify the juveniles with the respondent parents.

89. That currently, the [respondent parents] need assistance from the service providers in order to meet even their basic needs. At this time, the [respondent parents] are in the same position as they were in 2006.

90. That at this time, the respondent parents are not in a position to provide for the juveniles' needs or to provide care for the juveniles. At the time of the termination hearing, the respondent parents had not made progress in addressing the issues that led to the juveniles out of home placement.

Respondent-mother assigns error to the trial court's findings, but has failed to specifically argue in her brief that the findings were unsupported by the evidence. Instead, she generally argues that the trial court's findings are not specific enough under North Carolina Rule of Civil Procedure 52(a). In making this argument, respondent-mother does not specifically challenge any of the trial court's findings of fact. Consequently, respondent-mother has abandoned her assignments of error on these issues, and the findings are deemed binding on appeal. See *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005) (concluding respondent had abandoned factual assignments of error when she "failed to specifically argue in her brief that they were unsupported by

evidence"); *In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001) (holding that a "broadside exception . . . does not present for review the sufficiency of the evidence to support the entire body of the findings of fact"). In addition, a review of the record and transcript shows that each of the trial court's findings is based upon competent evidence, including orders entered in the case and testimony from Dr. Jenny Poston, assigned Parenting Capacity Evaluator; Eric Davis, case manager for Resources Unlimited; and Linda Avery, respondent-mother's therapist.

Respondent-mother's main argument, for which she cites *In re Ivey*, 156 N.C. App. 398, 576 S.E.2d 386 (2003), is that the trial court erred in its conclusions of law because its findings make poverty and homelessness the basis of her culpability. However, the trial court specifically found that respondent-mother's willfulness, not her poverty, caused respondent-mother's failure to comply with the case plan. The trial court further found that respondent-mother had failed to address issues that have been pervasive in respondent-mother's life, such as poor parenting and unstable housing. Respondent-mother failed to complete, as ordered by the court, individual counseling, parenting classes, and the M.A.P. program, all of which were essential to respondent-mother's reunification with her children. We conclude that the unchallenged findings support the trial court's conclusion that respondent-mother willfully left her children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made in correcting those conditions

which led to the removal of the children. See *In re Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 224-25 (1995) ("Extremely limited progress is not reasonable progress.").

Respondent-mother also contends, and DSS concedes, that the trial court erred in its conclusion number three, which states that "respondents did not file responsive pleadings to the petition to terminate parental rights." The record shows that respondent-mother filed an answer on 21 May 2008, and the trial court found in finding of fact number one that "respondent mother filed an Answer to the Petition of Terminate [P]arental Rights."

Respondent-mother next contends that the trial court abused its discretion in concluding during the dispositional stage that the termination of her parental rights was in the best interests of the children.

In determining whether terminating the parent's rights is in the juvenile's best interest, the court shall consider 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 (2007).

The trial court made the following findings of fact to support the court's determination that it was in the best interests of the children to terminate respondent-mother's parental rights:

98. That Ms. Bryant testified and the Court finds that it would be in [R.F.]'s best interest to have [a] stable home, participation in educational activities; and someone who is willing to provide her with structure and encouragement. Due to [the respondent parents'] inability to demonstrate stability, Mr. Bryant would have serious concerns if [R.F.] were returned to [the respondent parents].

99. That D.B. Jr. and B.L.B. have continuously remained in the Petitioner's custody since March 2006. It is clear that the respondent mother loves her children. However, she is not in [a] position now or [in] the foreseeable future to provide for the juveniles' needs. The respondent parents failed to demonstrate reasonable progress under the circumstances in correcting the conditions that led to the juveniles' placement in the Petitioner's custody. They failed to successfully complete the court ordered case plan in order to be reunited with the juveniles. They have not successfully addressed the issues that led to the juveniles' placement in the Petitioner's custody. The respondent parents have not satisfactorily demonstrated the skills learned from the court ordered reunification plan and/or case plan.

100. That the juveniles are in need of a safe, stable, and permanent environment.

101. That [R.F.] is currently placed in a potential adoptive/relative placement in Lee County. She has been in this placement since June 2007. [R.F.] also resided with Mr. and Mrs. Douglas in 2005 for a period of time. Since [R.F.] was placed in the Petitioner's custody, Mr. and Mrs. Douglas maintained contact with [R.F.]. Ms. Gantt requested assistance from Lee County to monitor the

placement. Since [R.F.]'s placement, Ms. Gantt receives updates from Lee County Department of Social Services. Based on the updates, Ms. Gantt does not have any concerns regarding Mr. and Mrs. Douglas's ability to meet the juvenile's needs.

102. That D.B. Jr. and B.L.B. are also placed in a potential adoptive placement. They have been in this placement for almost a year. Ms. Gantt believes this home provides the necessary structure for the juveniles. B.L.B. and D.B. Jr. participate in individual therapy.

103. That the goal of the case is adoption. Finding a safe, stable, and permanent environment can only be accomplished through adoption. Termination of parental rights would assist in the adoption process.

Based upon the trial court's unchallenged findings, which reflect a rational reasoning process, we conclude that the trial court did not abuse its discretion in its determination that terminating the parental rights of respondent-mother was in the best interests of the children.

Respondent-mother next contends that the trial court erroneously relied on hearsay evidence from Jenny Poston, Linda Avery, and Pier Bryant "regarding opinions or diagnoses which they were not qualified to make." We disagree.

"In a bench trial, the court is presumed to disregard incompetent evidence. Where there is competent evidence to support the court's findings, the admission of incompetent evidence is not prejudicial." *In re McMillon*, 143 N.C. App. 402, 411, 546 S.E.2d 169, 175 (2001) (citations omitted). To prevail on appeal, "an appellant must show that the court relied on the incompetent evidence in making its findings." *In re Huff*, 140 N.C. App. 288,

301, 536 S.E.2d 838, 846 (2000) (citation and internal quotation marks omitted).

Here, even assuming *arguendo* that respondent-mother is correct that the trial court admitted hearsay evidence, she has failed to demonstrate that its admission prejudiced her. Respondent-mother does not assign error to any findings of fact regarding the witness's testimony. Further, there was ample other evidence to support the trial court's findings of fact and conclusions of law, including documentary evidence of respondent-mother's diagnoses. Accordingly, this assignment of error is overruled.

Finally, respondent-mother contends that the trial court failed to meet statutory timelines. Respondent-mother argues that the delay in holding the termination proceedings and in entering the termination order was reversible error. We disagree.

N.C. Gen. Stat. § 7B-1109(a) establishes a limit of ninety days between the time a petition is filed and the adjudicatory hearing is held. N.C. Gen. Stat. § 7B-1109(a) (2007). In addition, N.C. Gen. Stat. § 7B-1109(e) states that "[t]he adjudicatory order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing." N.C. Gen. Stat. § 7B-1109(e) (2007). "[T]his Court has held that time limitations in the Juvenile Code are not jurisdictional . . . and do not require reversal of orders in the absence of a showing by the appellant of prejudice resulting from the time delay." *In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 443, 615 S.E.2d 704, 707 (2005).



Here, the trial court held its first adjudicatory hearing approximately 140 days after the original juvenile petition was filed, which is fifty days beyond the statutory limit of ninety days. The trial court also entered its termination order on 19 December 2008, a delay of approximately thirty days. Although the trial court did not meet the statutory timelines, respondent-mother failed to improve her circumstances following the award of custody of the minor children to DSS. Therefore, we hold that respondent-mother has failed to demonstrate that the trial court's failure to hold the hearing or enter its order within the statutory timelines prejudiced her in any way.

Accordingly, we affirm the trial court's orders terminating respondent-mother's parental rights to R.F., D.B., and B.B.

Affirmed.

Chief Judge MARTIN and Judge HUNTER, Robert C., concur.

Report per Rule 30(e).