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NO. COA09-379

NORTH CAROLINA COURT OF APPEALS

Filed: 1 September 2009

IN THE MATTER OF:

P.C.L.P.,

Minor Child.

Gaston County
No. 04 J 202

Appeal by respondent from an order entered 10 December 2008 by Judge Thomas G. Taylor in Gaston County District Court. Heard in the Court of Appeals 10 August 2009.

Elizabeth Myrick Boone, for Gaston County Department of Social Services, petitioner-appellee.

Parker, Poe, Adams & Bernstein, by Jessica Dixon, for Guardian ad Litem.

Peter Wood, for respondent-appellant Mother.

JACKSON, Judge.

Respondent-mother ("respondent") appeals from an order terminating her parental rights to her daughter, P.C.L.P. Although the father's parental rights also were terminated, he is not a party to this appeal. For the reasons stated below, we affirm.

On 21 May 2004, the Gaston County Department of Social Services ("DSS") filed a petition alleging that P.C.L.P. was a neglected and dependent juvenile. DSS stated that in April 2004,

respondent admitted to "inappropriately disciplining" P.C.L.P. DSS alleged that this inappropriate discipline resulted in bruising to P.C.L.P.'s back, right leg, inner left thigh, and above each ankle. P.C.L.P. was placed in the custody of DSS pursuant to a non-secure custody order entered that same day. The trial court conducted an adjudicatory hearing on 21 May 2004, at which respondent admitted that P.C.L.P. was a neglected juvenile as defined in North Carolina General Statutes, section 7B-101(15). The court adjudicated P.C.L.P. to be a neglected juvenile pursuant to an order entered 20 October 2004, *nunc pro tunc* 13 July 2004.

Pursuant to a mediation agreement, on 22 April 2005, the trial court entered a review order continuing custody of P.C.L.P. with DSS, and placing P.C.L.P. with the paternal grandparents. Respondent was given one year to demonstrate compliance with her case plan, which included: (1) resolving any substance or alcohol abuse issues, documenting the recommendations of a completed substance abuse assessment, submitting to random drug screens, and maintaining sobriety, as evidenced by six months of clean drug screens; (2) completing a psychological evaluation; (3) completing a parenting capacity evaluation and following through with all recommendations; (4) demonstrating skills learned from a completed parenting class; (5) maintaining legal, stable employment for at least six months, with income sufficient to meet the juvenile's basic needs; (6) maintaining an appropriate, safe and stable living environment; (7) contacting the social worker at least weekly; and (8) attending supervised visitation and interacting

appropriately. The trial court further noted that respondent had completed a domestic violence assessment and domestic violence counseling. The trial court placed P.C.L.P. with her paternal grandparents.

Because the paternal grandparents were moving and had insufficient income to support P.C.L.P., the trial court changed her placement pursuant to an order filed 5 December 2005, *nunc pro tunc*, 27 September 2005. Her new placement was with her paternal uncle and aunt. On 29 November 2005, the trial court appointed the paternal uncle and aunt as her guardians of the person. Subsequently, due to concerns about P.C.L.P.'s increased inappropriate behavior, the paternal uncle and aunt requested that they be removed as guardians of the person.

By order filed 8 December 2006, the trial court removed the paternal uncle and aunt as guardians of the person and appointed the maternal aunt and uncle as guardians of the person. Only one month later, the new guardians requested that they be removed as guardians of P.C.L.P. due to concerns about her behavior. By order filed 6 February 2007, they were removed as guardians on 16 January 2007, with physical and legal custody of P.C.L.P. being returned to DSS for placement in a therapeutic foster home.

At the 20 March 2007 review hearing, the trial court noted that P.C.L.P. was scheduled to have a sex specific evaluation done. This was due to allegations of inappropriate sexual behavior while in the care of her paternal uncle and aunt. The evaluation revealed that P.C.L.P. had allegedly been sexually assaulted by her

maternal uncle "Bubba." She had twice had surgery to remove foreign objects - a jingle bell and a cigarette butt - from her vaginal cavity. At nine years old, she scored "extremely high" on scales of sexual drive/preoccupation and impulsive/antisocial behavior, placing her at "high risk," with "severe psychosexual and mental health needs."

At the 31 July 2007 review hearing, the trial court ordered that respondent's visitation should be arranged and supervised by P.C.L.P.'s therapist. This was at the therapist's recommendation, to enable clinical staff to provide supervised visits and interventions with P.C.L.P. and her mother, due to clinical concerns centering on P.C.L.P.'s emotional responses when in her mother's presence. Visitation then ceased. At a 13 November 2007 review hearing, the trial court reinstated supervised visitation in a therapeutic setting at the therapists discretion.

At the review hearing held 10 June 2008, the trial court noted that respondent had given birth to another child who had a case open with DSS as a result of a Child Protective Services investigation. DSS had arranged visitation so that P.C.L.P. could meet her new brother. When he was just four days old, P.C.L.P.'s father drove respondent and the newborn to DSS. Social workers smelled alcohol on the father's breath. A Breathalyzer test showed his alcohol level at 0.08, the legal limit for driving while impaired.

On 24 June 2008, DSS filed a petition to terminate respondent's and the father's parental rights. In the petition,

DSS recited the history of respondent's case, and her failures to remain sober and drug free, to maintain stable housing, and maintain weekly contact with DSS. DSS noted that P.C.L.P. had resided separate and apart from respondent since 21 May 2004, and that respondent had "demonstrated a lack of parental concern for the juvenile." Accordingly, DSS alleged three grounds for termination: (1) that respondent had neglected the juvenile within the meaning of section 7B-101(15) of the North Carolina General Statutes, pursuant to section 7B-1111(a)(1); (2) that respondent had willfully left P.C.L.P. in foster care for more than twelve months without showing that reasonable progress under the circumstances had been made in correcting those conditions that led to the child's removal, pursuant to section 7B-1111(a)(2); and (3) that respondent, for a continuous period of six months immediately preceding the filing of the petition, had willfully failed to pay a reasonable portion of the cost of care for P.C.L.P. although physically and financially able to do so, pursuant to section 7B-1111(a)(3).

A hearing was held on the petition to terminate respondent's parental rights on 10 November 2008. The trial court concluded as a matter of law that grounds existed to terminate her parental rights in that she had wilfully abandoned P.C.L.P. for at least six months immediately preceding the filing of the petition and had willfully left P.C.L.P. in foster care for more than twelve months without showing to the satisfaction of the court that she had made reasonable progress under the circumstances toward correcting those

conditions that led to P.C.L.P.'s removal from her care. The court further concluded that it was in P.C.L.P.'s best interests that respondent's parental rights be terminated. Accordingly, pursuant to its order filed 10 December 2008, the trial court terminated respondent's parental rights.

Both Respondent and the father filed notices of appeal. Because the father had not signed his notice of appeal and neither DSS nor the guardian *ad litem* were served with his notice of appeal, the trial court dismissed the father's appeal on 18 March 2009. We subsequently denied the father's petition for writ of *certiorari*.

In her first two arguments, respondent contends that the trial court erred in finding and concluding that grounds existed to terminate her parental rights. We disagree.

North Carolina General Statutes, section 7B-1111 sets forth the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support a termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000)). When a finding of fact has not been challenged on appeal, "the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman*

v. Koufman, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted).

In the case *sub judice*, the trial court concluded that two grounds existed to terminate respondent's parental rights. One of those grounds was that respondent "has willfully left [P.C.L.P.] in foster care or placement outside the home for more than 12 months, since May 20, 2004, without showing to the satisfaction of the Court reasonable progress under the circumstances has been made in correcting the conditions which led to [P.C.L.P.'s] removal." Although the trial court did not state the statutory provision, this language is consistent with section 7B-1111(a)(2):

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.

N.C. Gen. Stat. § 7B-1111(a)(2) (2007). This Court has stated that

to find grounds to terminate a parent's rights under G.S. § 7B-1111(a)(2), the trial court must perform a two part analysis. The trial court must determine by clear, cogent and convincing evidence that a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and, further, that as of the time of the hearing, as demonstrated by clear, cogent and convincing evidence, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

In re O.C., 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (internal citations omitted), *disc. rev. denied*, 360 N.C. 64, 623 S.E.2d 587 (2005). Willfulness "is established when the respondent

had the ability to show reasonable progress, but was unwilling to make the effort." *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002) (citing *In re McMillon*, 143 N.C. App. 402, 546 S.E.2d 169, *disc. rev. denied*, 354 N.C. 218, 554 S.E.2d 341 (2001)).

Respondent has assigned error to only seven of the trial court's findings of fact. Pursuant to *Koufman*, the unchallenged findings of fact are deemed supported by competent evidence and binding upon this Court.

Here, in support of its conclusion of law that grounds existed to terminate respondent's parental rights, the trial court made numerous unchallenged findings of fact with respect to [P.C.L.P.]'s placement in the custody of DSS - in foster care or placement outside the home - continuously from May 2004. From that time until the time of the termination hearing, was a period of nearly fifty-two months - considerably more than the twelve months contemplated in the statute.

Additionally, the trial court made multiple unchallenged findings of fact with respect to respondent's repeated failure to comply with her case plan.

45. As of August of 2005, Respondent Mother was not fully complying with her case plan, most particularly failing to comply with random drug screens on August 3, 2005, and August 9, 2005.

. . . .

54. In a Review and Permanency Planning Report filed on March 15, 2007 (more than three years after [P.C.L.P.]'s placement in DSS custody) in the Abuse/Neglect action (later adopted as

fact by the court in an Order dated March 27, 2007) Stacy Christensen, a social worker for DSS, reported that neither Respondent Parent had complied with their case plan.

. . . .

59. Prior to March 20, 2007, the Respondent parent's [sic] cooperation and execution of their case plans was inconsistent at best, having never fully complied with the requirements of drug testing, parenting skill training or counseling.

60. In a Review and Permanency Planning Report filed on June 22, 2007, in the Abuse/Neglect action (later adopted as fact by the court in an Order filed October 3, 2007) Stacy Christensen, a social worker for DSS, reported that neither Respondent Parent had complied with their case plan- . . . [respondent] having missed two [drug screens].

. . . .

76. As a result of Respondent's [sic] continued non-compliance with their case plans, and [P.C.L.P.]'s positive response to therapeutic placement, the DSS recommended, in a Permanency Planning Report filed January 2, 2008, that [P.C.L.P.]'s case plan be changed to a sole plan of adoption.

The trial court further found specific examples of respondent's failure to comply:

33. On February 10, 2005 Respondent Mother tested positive for the presence of marijuana . . . in her blood.

34. On March 5, 2005 Respondent Mother refused to submit to a drug test, which is therefore considered by the Court as a positive test.

. . . .

42. At all times while [P.C.L.P.] was in the custody of DSS the Respondent Parents had significant substance abuse issues which they were unable to successfully address.

. . . .

45. As of August of 2005, Respondent Mother was not fully complying with her case plan, most particularly failing to comply with random drug screens on August 3, 2005, and August 9, 2005.

. . . .

52. As of January 2007, the Respondent parents still had not obtained stable independent housing and were staying with "friends".

. . . .

55. In the report [filed on March 15, 2007 and previously adopted as fact], [DSS social worker] Ms. Christensen noted that Respondent Mother . . . had missed a treatment team meeting for [P.C.L.P.;] missed her Service review; and had not obtained independent housing.

. . . .

60. In a Review and Permanency Planning Report filed on June 22, 2007, in the [] Neglect action (later adopted as fact by the court in an Order filed October 3, 2007) Stacy Christensen, a social worker for DSS, reported that neither Respondent parent had complied with their case plan - . . . [respondent] having missed two [drug screens].

. . . .

65. Both Respondent Parents tested positive for the presence of THC, the psychoactive portion of Marijuana, on July 31, 2007.

. . . .

67. In his Order filed January 2, 2007, subsequent to the November hearing, Judge Jackson found that although the Respondents were employed and had housing, they had not been able to be contacted for drug screens, and were not attending substance abuse treatment or couples counseling.

. . . .

69. On October 23, 2007 the Respondent Mother tested positive for opiates [and] marijuana[.]

. . . .

78. On May 15, 2008, Respondent Mother refused a drug screen.

Accordingly, the trial court found as fact that:

85. Respondent Mother has, at all relevant times during the [] Neglect action, materially failed to make consistent reasonable progress in any goal of her Case Plan including, but not limited to: finding and keeping gainful employment, establishing a stable, safe and independent domicile, fully participating in all recommended counseling for herself and [P.C.L.P.], and meaningfully participating in drug treatment to the end of stopping her abuse of illegal substances.

Additionally, the trial court found as fact that:

87. Throughout the Neglect Action Respondent Mother has given mutable, conflicting and inconsistent accounts of the frequency and type of drugs she was using, and the persons she was associating with; failed to fully cooperate in drug screens, counseling and planning sessions, and [] received serious criminal charges, rendering meaningless the repeated efforts of her Counselors and the DSS to assist her in recovery and placement of the child with her.

88. Throughout the Neglect Action, [] Respondent Mother . . . [has] unreasonably failed to follow through with treatment recommendations, demonstrating a voluntary disregard for the seriousness of [her] problems and the consequent affect [sic] on [her] ability to have a safe, normal, and healthy relationship with [her] minor child [P.C.L.P.]

Based upon these unchallenged findings of fact, we conclude that the trial court's findings of fact support its conclusion that respondent's failure to correct the conditions which led to the

removal of the juvenile was willful. See *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175, *disc. rev. denied*, 354 N.C. 218, 554 S.E.2d 341 (2001) ("Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort."); *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224-25 (1995) ("Extremely limited progress is not reasonable progress.").

Respondent further contends that she is complying with her case plan for her other child, which is almost identical to her case plan for P.C.L.P. She argues that her compliance with the case plan for her other child demonstrates that she complied with the case plan for P.C.L.P. However, it is clear from the trial court's findings of fact that respondent did not comply with the case plan for P.C.L.P. As noted previously, the trial court found as fact that respondent continued to use illegal drugs, failed to obtain stable, independent housing, and did not attend counseling. Accordingly, based upon the trial court's unchallenged findings of fact, we conclude that grounds exist to terminate respondent-mother's parental rights pursuant to section 7B-1111(a)(2). Because we reach this conclusion, the remaining ground found by the trial court to support termination need not be reviewed by this Court. See *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

Respondent also argues that the trial court erred in concluding that it was in P.C.L.P.'s best interests to terminate her parental rights. We disagree.

"The trial court has discretion, if it finds that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the [juvenile's] best interests." *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001). Factors the trial court considers in determining the juvenile's best interests include: (1) the age of the juvenile; (2) the likelihood of adoption; (3) the impact on the accomplishment of the permanent plan; (4) the bond between the juvenile and the parent; (5) the relationship between the juvenile and a proposed adoptive parent or other permanent placement; and (6) any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2007). The court is to take action "which is in the best interests of the juvenile" when "the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100(3) (2007). As a discretionary decision, the trial court's disposition order will not be disturbed unless it could not have been the product of a "reasoned decision." *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387, *aff'd*, 360 N.C. 165, 622 S.E.2d 495 (2005).

Here, the trial court considered all the factors required by section 7B-1110(a). First, the trial court made a specific finding of fact referencing P.C.L.P.'s birthdate, her age, and that she had spent four years in placement outside the home. Additionally, the trial court found:

4. That [P.C.L.P.] has suffered from psychological and behavioral problems concerning self abuse and sexually inappropriate behavior, which problems have

been successfully addressed in her current foster placement and through outpatient counseling.

. . . .

8. That [respondent has not], during the pendency of the Neglect Action, meaningfully participated in counseling or training which would allow [her] to address [P.C.L.P.'s] serious psychological and behavioral problems.

9. That [P.C.L.P.] was placed in DSS custody pursuant to an allegation of abuse by Respondent Mother, which abuse Respondent Mother continues to deny.

10. That the Court finds the Respondent Mother's testimony to lack credibility, and further finds that Respondent Mother's testimony evidences a lack of cooperation and commitment to solving the problems which led to [P.C.L.P.]'s removal from her care.

. . . .

15. That [P.C.L.P.'s] adoption is the Petitioner's present court-sanctioned permanent plan and termination of [respondent's] parental rights would aid in accomplishing that plan, by removing the barrier to legal adoption.

16. That as a result of Respondent Mother's continuing failure to consistently reasonably address her drug use, or otherwise meaningfully comply with her case plan, resulting in Respondent's inability to have the child placed in her care, Respondent Mother's visitation with [P.C.L.P.] has ceased, and [P.C.L.P.], though bonded with Respondent, has not had the opportunity to develop a normal parent/child relationship bond with the Respondent Mother and in fact has demonstrated a continued fear of Respondent Mother.

. . . .

18. That [P.C.L.P.]'s current placement is safe and appropriate, and provides for her physical, emotional and educational needs.

Based upon these findings of fact, made after an extensive termination hearing, we can discern no abuse of the trial court's discretion. Accordingly, the order terminating respondent's parental rights to P.C.L.P. is affirmed.

Affirmed.

Judges MCGEE and CALABRIA concur.

Report per Rule 30(e).