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NO. COA09-809

NORTH CAROLINA COURT OF APPEALS

Filed: 3 November 2009

IN THE MATTER OF:

J.H.R.,  
A Minor Child.

Rutherford County  
No. 07 JT 79

Appeal by Respondents mother and father from order entered 19 March 2009 by Judge Randy C. Pool in Rutherford County District Court. Heard in the Court of Appeals 5 October 2009.

*Rutherford County Department of Social Services, by Brian W. King and Laura Slaughter, for Petitioner-Appellee.*

*Michael E. Casterline, for Respondent-Appellant Mother.*

*Joyce L. Terres, for Respondent-Appellant Father.*

*Pamela Newell Williams, for Guardian ad Litem.*

BEASLEY, Judge.

Respondents mother and father appeal from an order terminating their parental rights to juvenile J.H.R<sup>1</sup>. Respondents each challenge the trial court's conclusion that grounds existed to terminate their parental rights. We affirm the order terminating Respondents' parental rights.

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<sup>1</sup>To protect the privacy of the minor, we refer to him in this opinion by his initials J.H.R.

The Rutherford County Department of Social Services (DSS) became involved with Respondents on 3 May 2007, when it received reports that they were using methamphetamine and driving while impaired with J.H.R. in the car. After unsuccessful attempts to meet with Respondents, DSS filed an interference petition. On 29 June 2007, law enforcement aided DSS in contacting Respondents. When officers searched Respondents' home, they found methamphetamine, marijuana, and drug paraphernalia. As a result, Respondents were charged with felony possession with intent to manufacture, sell, or deliver a controlled substance, maintaining a dwelling for controlled substances, possession of a firearm by a felon, and misdemeanor possession of marijuana and possession of drug paraphernalia. Respondents ultimately pled guilty to possession of drug paraphernalia.

DSS originally placed J.H.R. in a kinship placement with an uncle. Respondents attempted to remove J.H.R. from his placement in August of 2007 after an altercation at a family gathering, and J.H.R. was placed in non-secure custody with DSS. J.H.R. was two and a half years old when he was placed in DSS custody, and his front teeth were broken to the gum because of poor oral hygiene. On 2 October 2007, the trial court adjudicated J.H.R. dependent and ordered Respondents to pay child support and develop and cooperate with an in-home family services agreement.

On 18 September 2008, DSS filed a petition to terminate Respondents' parental rights. DSS alleged three grounds for termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1-3): (1)

that J.H.R. was a neglected juvenile; (2) that in the previous twelve months Respondents had failed to make reasonable progress toward correcting the conditions that led to J.H.R.'s removal from the home; and, (3) that Respondents had failed to pay a reasonable portion of the cost of care for J.H.R.

The trial court conducted a hearing on 26 and 27 February 2009, and entered a written order terminating Respondents' parental rights on 19 March 2009. The trial court found all three grounds for termination alleged by DSS, and concluded that it was in J.H.R.'s best interest that Respondents' parental rights be terminated. Respondents each entered written notice of appeal.

On appeal, Respondents challenge the trial court's conclusions that all three grounds for termination were supported by sufficient evidence. We affirm.

In the adjudicatory stage, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109(f) (2007); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Review in the appellate courts is limited to determining whether clear and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000).

"`[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them.'" *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (quoting

*Hunt v. Hunt*, 85 N.C. App. 484, 488, 355 S.E.2d 519, 521 (1987)). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." See *In re S.D.J.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 665 S.E.2d 818, 824 (2008) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

At the outset, we note that although the trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1-3) to terminate Respondents' parental rights, we find it dispositive that the findings of fact not challenged by either Respondent are sufficient to support termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), that Respondents left J.H.R. in foster care or placement outside the home for more than twelve months without making reasonable progress toward correcting the conditions that led to J.H.R.'s removal from the home. 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).

In terminating parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must conduct 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. Evidence and findings which support a determination of "reasonable progress" may

parallel or differ from that which supports the determination of "willfulness" in leaving the child in placement outside the home.

*In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005).

"'Willfulness' when terminating parental rights on the grounds of N.C. Gen. Stat. § 7B-1111(a)(2), is something less than 'willful' abandonment when terminating on the ground of N.C. Gen. Stat. § 7B-1111(a)(7). . . . A finding of willfulness is not precluded even if respondent has made some efforts to regain custody of the children." *In re Shepard*, 162 N.C. App. 215, 224, 591 S.E.2d 1, 7 (2004) (internal citation omitted).

The trial court's findings of fact not challenged by either Respondent, and therefore binding on this Court, include:

1. The petitioner Rutherford County Department of Social Services has been the full and total caretaker, through placement providers, of the minor child since obtaining custody on August 13, 2007.

. . . .

10. The Court finds that on May 3, 2007, Rutherford County Department of Social Service accepted a report that alleged that the Respondents both parents [sic] were using methamphetamines daily. The child was riding in the vehicle with the parents when they were high. The minor child was very dirty and appeared to be underfed.

11. A referral was made on June 29, 2007 leading to an investigation of the Respondents' home by the Rutherford County Sheriff's Department. They found drug paraphernalia [and] drugs that resulted in several felony offenses including Possession of Methamphetamines with intent to Manufacture, Sell or Deliver, Possession of Marijuana, and Possession of a Weapon by a Felon.

12. The child was placed in kinship placement and later taken into non-secure custody of DSS and it resulted in an Out of Home Service Agreement on August 28, 2007. In this agreement, the Respondents agreed to address numerous issues and agreed to successful [sic] complete the listed items on the agreement.

. . . .

14. The substance abuse assessment concluded that Respondents had substance abuse problems and recommended that [they] complete 96 hours of out of [sic] patient treatment.

15. The substance abuse assessment submitted by the Petitioner as evidence, included statements by the Respondent mother that she admitted to alcohol use to the point of blacking [out], resulting in past violence and neglect of her responsibilities. . . . The respondent mother also admitted to using cocaine but she had not for two and [a] half years.

16. The Respondent mother admitted to daily use of methamphetamines since the charges with drug offense at least until resulting charges were resolved by plea in October 2007.

. . . .

18. As a result of the assessment, the assessor, Susan Kernes, noted a major concern was the Respondent mother's denial, problems of drinking, lack of understanding of addiction, and attempt to put herself in the best light possible. Thus, there was a denial of use and addiction.

19. The assessment recommended that the Respondents complete 96 hours of treatment, and the Respondents did not complete in a timely manner. The Respondent father completed only 10 hours. The Respondent Mother completed only a few classes.

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21. The drug screens were admitted into evidence and they stated as follows:

a. October, [sic] 12 2007 both Respondent Mother and Respondent Father tested positive on a urinalysis test for amphetamine and methamphetamine. Respondent Mother tested positive [for] methamphetamine on hair analysis and the Respondent Father tested positive for marijuana.

b. On January 23, 2008, Respondent Father tested positive for a urinalysis test for marijuana and Respondent Mother tested positive for methamphetamine.

c. On May 7, 2008, Respondent Mother tested negative for a urinalysis test and [Respondent Father] tested positive for marijuana metabolite and propoxyphene.

d. On July 21, 2008 Respondent Mother and Respondent Father both tested negative on a urinalysis test; however, on the hair analysis, Respondent Mother tested positive for methamphetamine and amphetamine and Respondent Father tested positive for methamphetamine.

e. On October 2, 2008, Respondent Father and Respondent Mother tested negative on both a hair analysis and a urinalysis.

f. On November 17, 2008, Respondent Father and Respondent Mother tested negative urinalysis.

g. On January 12, 2009, the Respondent Mother and Respondent Father tested positive for cocaine in hair analysis. The Respondent Mother tested negative on the urinalysis and the Respondent Father tested positive for hydrocodone and hydromophone on his urinalysis.

22. The Respondent Mother and Father testified that the positive result for cocaine

was due to both of them going to a friend's house where others had smoked cocaine.

23. The Court found the Respondents['] testimony was not credible.

24. The Respondents were required to obtain employment as part of the Out-of-Home Agreement.

25. The Respondents did not comply with this provision.

. . . .

34. The Respondent[s'] explanation for continued drug use was not satisfactory. The Respondents testified they continued to use daily to "fight drugs" in their work with the law enforcement as part of a plea. In October 2007, the felony charges they faced were reduced to misdemeanors and resolved. Their work with law enforcement ended on that date. There was no satisfactory explanation for their use from October 2007 until July 2008.

35. The Respondents' explanation for failing not to complete [sic] the treatment recommended in the substance abuse assessment is not credible. The Respondents testified they did not attend because they did not [have] money. The recommendations included free classes in NA and AA and these classes were available in the nearby area. The evidence indicates the Respondents continued to use money to take illegal drugs.

. . . .

37. The Court will further find that through December 2007 until July 2008 the Respondents did not attend any NA or AA meetings.

The trial court's unchallenged findings of fact support its conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate Respondents' parental rights. The trial court found that J.H.R. had been placed outside of Respondents' home for more than twelve months. DSS became involved with



Respondents through reports that they were driving while under the influence of drugs with J.H.R. in the car. Respondents failed to complete substance abuse treatment, and made inconsistent attempts at participating in AA and NA. Respondents also continued to abuse and repeatedly test positive for drugs, including positive tests for cocaine in January 2009, just weeks before the termination hearing. Respondents also failed to maintain employment, as required by their services agreement. Thus, the trial court's findings of fact support its conclusion that Respondents failed to make reasonable progress to address the conditions that led to J.H.R.'s removal from their home, and we hold that the trial court properly found grounds for termination of Respondents' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Accordingly, we affirm the trial court's order terminating Respondents' parental rights.

Affirmed.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).