

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA10-466

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

IN THE MATTER OF:

A.B.K., MINOR,  
by THE DEPARTMENT OF  
SOCIAL SERVICES OF GASTON  
COUNTY, NORTH CAROLINA,  
Petitioner,

v.

Gaston County  
No. 08 JT 16

M.N.J.M.,  
Respondent Mother,  
and J.S.,  
Respondent Putative  
Father.

---

IN THE MATTER OF:

A.B.P., MINOR, and  
V.A.P., MINOR, and  
M.N.M., MINOR,  
by THE DEPARTMENT OF  
SOCIAL SERVICES OF GASTON  
COUNTY, NORTH CAROLINA,  
Petitioner,

v.

Gaston County  
Nos. 08 JT 17  
08 JT 18  
08 JT 19

M.N.J.M.,  
Respondent Mother,  
and V.R.P., SR.,  
Respondent Father.

---

IN THE MATTER OF:

E.B.M., MINOR,  
by THE DEPARTMENT OF  
SOCIAL SERVICES OF GASTON  
COUNTY, NORTH CAROLINA,  
Petitioner,

v.

Gaston County  
No. 08 JT 21

M.N.J.M.,

Respondent Mother,  
and J.W.M., JR.,  
Respondent Father.

Appeal by respondent mother from orders entered 11 February 2010 by Judge Thomas G. Taylor in Gaston County District Court. Heard in the Court of Appeals 7 September 2010.

*Elizabeth Myrick Boone for petitioner-appellee.*

*Mercedes O. Chut for respondent-appellant.*

*Klein & Freeman, PLLC, by Marc S. Gentile, for guardian ad litem.*

GEER, Judge.

Respondent mother appeals from orders terminating her parental rights to A.B.K. ("Alice"), A.B.P. ("Amanda"), V.A.P. ("Victor"), M.N.M. ("Molly"), and E.B.M. ("Eric") on the grounds of neglect and lack of reasonable progress in correcting the conditions that led to the removal of the children from her custody.<sup>1</sup> It is undisputed that the children were removed from respondent mother's custody in part because of respondent mother's issues with domestic violence, inconsistent care and supervision, and her failure to maintain employment or to provide stable housing for the children. The trial court's findings, which are supported by the evidence, support the trial court's conclusion that respondent mother has

---

<sup>1</sup>The pseudonyms of "Alice," "Amanda," "Victor," "Molly," and "Eric" are used throughout this opinion to protect the minors' privacy and for ease of reading. The parental rights of the three respondent fathers were also terminated, but the respondent fathers are not parties to this appeal.

made little progress in remedying these issues over the past 25 months. Thus, the court properly found grounds existed for termination of respondent mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) (2009). Since grounds existed for termination, and respondent mother does not challenge the trial court's conclusion that termination of parental rights is in the best interests of the children, we affirm.

#### Facts

The Gaston County Department of Social Services ("DSS") first became involved with respondent mother and the children in October 2006. DSS initially provided family services to respondent mother, the children, and their respective fathers, but filed a juvenile petition on 4 January 2008, alleging that Alice, Amanda, Victor, Molly, and Eric, as well as two other siblings, were neglected juveniles.<sup>2</sup> DSS alleged that there was persistent and ongoing domestic violence between respondent mother and her husband, J.M. ("Mr. Mason"),<sup>3</sup> the father of Molly and Eric. In addition, Mr. Mason abused alcohol, marijuana, and crack cocaine.

The petition further alleged that respondent mother and Mr. Mason had not provided consistent care for the children since the children went to live with their daycare provider in January 2007. The children continued to be placed with other caretakers after

---

<sup>2</sup>The two other siblings were placed with permanent guardians by order entered 17 February 2009 and were not included in the termination proceedings at issue in this appeal.

<sup>3</sup>The pseudonym of "Mr. Mason" is used throughout this opinion to distinguish him from the other respondent fathers.

respondent mother and Mr. Mason lost their home due to non-payment of rent. Molly and Eric suffered from asthma and required frequent doctor and emergency room visits because of exposure to smoke while living with respondent mother and Mr. Mason, who continued to permit smoking in their home against medical advice. According to the petition, respondent mother and Mr. Mason were capable of maintaining employment to support the children, but did not do so. As a result, they lacked sufficient income to support the children and lacked appropriate and stable housing. Finally, respondent mother did not provide any monetary or in-kind assistance to the children while they were placed out of her home. Mr. Mason only provided \$400.00 towards the children's care, even though he had won \$10,000.00 in the lottery. Subsequently, respondent mother and Mr. Mason asked for the return of the \$400.00.

Prior to the hearing on the petition, DSS, respondent mother, and Mr. Mason participated in a permanency mediation conference. Respondent mother agreed that the children were neglected juveniles based upon the allegations in the petition. Respondent mother and Mr. Mason then both agreed to detailed case plans and agreed to show the trial court within a year that they were complying with those case plans and working towards reunification with the children. Respondent mother's case plan required her to (1) follow through with any mental health recommendations; (2) live in a violence-free home and not expose the children to any inappropriate relationship issues; (3) complete parenting classes and be able to demonstrate the skills learned; (4) maintain legal, stable

employment or have sufficient income to meet the children's basic needs (providing documentation of monthly income to DSS and the guardian *ad litem*); (5) maintain an appropriate, safe, and stable living environment for herself and the children (providing rent and utility receipts to the social worker on a monthly basis); and (6) contact the social worker weekly.

On 15 August 2008, the trial court entered an order adjudicating the children neglected and dependent and continuing custody with DSS. In the order, the court recited the terms of respondent mother's case plan and ordered her to comply with those terms in order to regain custody of the children. On the same day, the trial court entered a separate order establishing an initial permanent plan for the children of reunification with an alternate plan of guardianship with a relative or court-approved caretaker. On 7 January 2009, following a review hearing, the trial court changed the permanent plan to reunification with alternate plans for guardianship or adoption. The next month, the court changed the plan to reunification with an alternate plan of adoption only.

Subsequently, on 26 June 2009, the trial court entered an order changing the permanent plan to adoption. In that order, the court found that respondent mother and Mr. Mason had attended only four of their last eight scheduled visits and were considering releasing the children for adoption. The trial court further found that respondent mother had obtained a domestic violence protection order ("DVPO"), entered 5 January 2009, against Mr. Mason, but the order permitted Mr. Mason to remain in the residence.

On 2 September 2009, DSS filed petitions to terminate respondent mother's parental rights to the children ("TPR petitions") on the grounds of neglect, N.C. Gen. Stat. § 7B-1111(a)(1), and willfully leaving the children in placement outside the home for more than 12 months without showing reasonable progress in correcting the conditions that led to their removal, N.C. Gen. Stat. § 7B-1111(a)(2). The trial court held a hearing on the TPR petitions on 11 and 12 January 2010 and, on 11 February 2010, entered three separate orders terminating respondent mother's parental rights to the children: one order addressing Alice; one addressing Amanda, Victor, and Molly; and a third addressing Eric. The trial court found grounds existed to terminate respondent mother's parental rights to each juvenile under both N.C. Gen. Stat. § 7B-1111(a)(1) and N.C. Gen. Stat. § 7B-1111(a)(2) and concluded that termination of respondent mother's parental rights was in the best interests of the children. Respondent mother timely appealed to this Court from all three orders.

#### Discussion

Proceedings to terminate parental rights are conducted in two stages: (1) the adjudication phase, governed by N.C. Gen. Stat. § 7B-1109 (2009) and (2) the disposition phase, governed by N.C. Gen. Stat. § 7B-1110 (2009). *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Upon review of an order terminating parental rights, this Court must determine (1) whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and (2) whether the court's findings of fact

support its conclusions of law that one or more statutory grounds for termination exist. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). Findings of fact supported by competent evidence are binding on appeal even though there may be evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). Any findings of fact not specifically challenged on appeal are deemed supported by competent evidence. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Once a trial court has determined at the adjudication phase that at least one ground for termination exists, the case moves to the disposition phase where the trial court decides whether a termination of parental rights is in the best interests of the child. *In re Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908; N.C. Gen. Stat. § 7B-1110(a). The trial court is not required to terminate parental rights, but has the discretion to do so. *In re Tyson*, 76 N.C. App. 411, 419, 333 S.E.2d 554, 559 (1985). This Court, therefore, reviews the decision to terminate parental rights for abuse of discretion. *Id.*

In this case, respondent mother challenges only the adjudicatory portion of the orders, arguing that the findings of fact and the evidence do not support the court's conclusion that the children were neglected or that respondent mother failed to make reasonable progress toward correcting the conditions that led to the children's removal from her custody. We first consider respondent mother's argument regarding N.C. Gen. Stat. §

7B-1111(a)(2). N.C. Gen. Stat. § 7B-1111(a)(2) provides that the trial court may terminate parental rights if it finds

[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. 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.

Thus, to terminate parental rights on this ground, the trial court must conduct a two-part analysis, finding by clear, cogent, and convincing evidence that: (1) the parent willfully left a child in foster care or placement outside the home for over 12 months; and (2) the parent has not made, as of the time of the hearing, reasonable progress under the circumstances to correct the conditions which led to the removal of the child. *In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396, *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005).<sup>4</sup>

---

<sup>4</sup>We note that although, in their appellate briefs, the guardian *ad litem* and respondent mother have relied on case law applying an older version of § 7B-1111(a)(2), which limited the time frame in which a trial court could evaluate reasonable progress to the 12 months preceding the filing of the TPR petition, this is no longer the law. See *In re Pierce*, 356 N.C. 68, 75 n.1, 565 S.E.2d 81, 86 n.1 (2002) (explaining that in 2001, General Assembly "struck the 'within 12 months' limitation from the existing statute detailing the requirements for establishing grounds for the termination of parental rights"; therefore, "there is no specified time frame that limits the admission of relevant evidence pertaining to a parent's 'reasonable progress' or lack thereof"). The trial court was thus free to consider evidence of progress since the filing of the underlying petition.



It is undisputed that the children have been in DSS custody for 25 months. It is also undisputed that the children were taken into DSS custody for the following reasons: (1) persistent and ongoing domestic violence between respondent mother and Mr. Mason; (2) respondent mother's failure to provide consistent care for the children; (3) respondent mother's failure to maintain employment to support the basic needs of the children; and (4) respondent mother's failure to maintain appropriate and stable housing. The trial court made numerous relevant findings of fact regarding respondent mother's failure to make reasonable progress to correct these conditions.

First, as to the violence between respondent mother and Mr. Mason, the trial court found that even though respondent mother completed a domestic violence program, she continued to have a relationship with Mr. Mason. In January 2009, respondent mother filed a domestic violence complaint against respondent father and was granted a DVPO for one year. Yet, she continued her "on-again off-again" relationship with Mr. Mason. Because respondent mother does not challenge these findings, they are binding.

Respondent mother does, however, challenge the court's findings that the domestic violence persisted after DSS took custody of the children and that a domestic violence incident occurred in January 2010 between respondent mother and Mr. Mason. That incident occurred at respondent mother's home, despite the existence of the DVPO, resulting in a call to emergency responders. These findings of fact are supported by the testimony of Tara

Joyner, the DSS social worker assigned to the case, who explained that the police were called to respondent mother's residence on 10 January 2010 because of domestic violence between respondent mother and Mr. Mason. They are also supported by the entry of the DVPO in January 2009.

Respondent mother also challenges the court's finding that she did not take advantage of services that she was offered through the Institute for Family Centered Services ("IFCS"), designed in part to help her develop more appropriate ways of communicating with Mr. Mason and to decrease the domestic violence in her home and the children's exposure to domestic violence. This finding was supported by the testimony of Sherika McFadden, a team lead family center specialist with IFCS. Ms. McFadden testified that IFCS offered services to respondent mother, which included working on parenting strategies and communication to stem domestic violence, but that respondent mother never followed through with the recommended services.

Next, we turn to the court's findings concerning respondent mother's failure to provide consistent care for the children. Respondent mother does not challenge the trial court's findings that she has not provided consistent care for the children since January 2007 and that she has been unable to provide adequate supervision or protection of the children since DSS took custody of them. Nor does she challenge the court's findings that, between March 2008 and October 2008, she "failed to show or canceled" three out of 21 visitation opportunities and was more than 15 minutes

late to eight visits; that after October 2008, her visitation was decreased, and she "failed to show or canceled" three out of 13 visits and was more than 25 minutes late to one visit; that after February 2009, when her visitation was further decreased, she "failed to show or canceled" four out of eight visits and was late to two visits; and that, after her visitation was again reduced in May 2009, she "failed to show or canceled" one out of seven visits and failed to reschedule two visits.

Respondent mother argues, however, that DSS presented no testimony at the termination hearing supporting the court's findings that she failed to consistently participate with IFCS and that she failed to improve and implement parenting skills she had learned in her program. In exclusively focusing on the hearing testimony, respondent mother overlooks other evidence that supports this finding, such as a permanency planning order entered 8 December 2009, in which the trial court found that respondent mother "has not had consistent participation with the Institute for Family Centered Services [to improve/implement parenting skills]." (Brackets original.) The trial court took judicial notice of the orders in the underlying juvenile file. In addition, Ms. McFadden testified that IFCS could have helped respondent mother with her "parent-child relationship issues" and "parenting strategies," but respondent mother did not follow through with the services. Ms. Joyner further testified that while respondent mother did try to demonstrate some of the skills she learned in parenting classes, she was often overwhelmed during visits with the children and

unsuccessful at applying those skills. Ms. Joyner acknowledged that the visits improved over time, but she attributed this improvement to IFCS having worked with the children to improve their behavior.

With regard to respondent mother's failure to maintain employment to support the basic needs of the children, respondent mother admits that she did not find employment, but argues that there was no testimony showing her failure was willful. She asserts that her employment problems were due to "the poor economy." Respondent mother has not, however, challenged the following finding:

Subsequent to the mediation agreement, Respondent Mother failed to maintain stable employment. Respondent Mother did not work from February 2008 until April 2008. She reported to the social worker that she was working for Freightliner from April 2008 until *she either quit or was fired* from Freightliner on July 29, 2008. Respondent Mother did not work from July 29, 2008 until September 9, 2008. Respondent Mother supposedly worked at Ingles for one month until *she quit* after not getting enough hours on October 21, 2008. From October 2008 until December 2008, she did not work. From December 5, 2008 until January 13, 2009, she reported working at Fresher than Fresh but was *terminated due to excessive absences*. From January 13, 2009 until November 13, 2009, she did not work. Respondent Mother did obtain a job with Kentucky Fried Chicken on November 13, 2009 and is still working as of the date of the hearing of this matter.

(Emphasis added.) Nor does respondent mother challenge the finding that she failed to provide any child support for any of the children in the 25 months they had been in DSS custody, despite her being sporadically employed during that time frame.

Finally, as to respondent mother's failure to maintain appropriate and stable housing for the children, respondent mother does not challenge the following finding:

Subsequent to the mediation agreement in April 2008, Respondent Mother failed to maintain stable housing. She reported obtaining housing in June 2008, but was evicted on October 14, 2008. She then reported living at her grandmother's trailer . . . from October 23, 2008 until January 15, 2009. During this time, she lived with [Mr. Mason]. From April 7, 2009 until the end of October 2009, she reported staying with different family members after losing their residence . . . . On October 29, 2009, she reported to the social worker that she was homeless. From November 3, 2009 until the date of this hearing, Respondent Mother lived in Bessemer City. Currently, Respondent Mother lives with her grandmother and one other person.

Respondent mother also does not challenge the trial court's finding that, on one occasion, emergency services responded to a call at respondent mother's residence where paramedics then treated someone for a drug overdose.

Respondent mother does argue that there was no testimony to support the court's finding that she failed to consistently provide verification of her housing and utilities. Ms. Joyner's review and permanency planning report, which the trial court "adopt[ed] into" its findings of fact in a permanency planning order, specifically states that respondent mother did not provide verification of housing or utilities. Ordinarily, this would not be competent evidence because a trial court "should not broadly incorporate [a] written report[] from outside sources as its findings of fact." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004).

Since, however, respondent mother did not appeal from the permanency planning order and has not challenged the incorporation on this appeal, it is binding.

We conclude that these findings – either unchallenged or supported by clear, cogent, and convincing evidence – support the trial court's conclusion that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2) to terminate respondent mother's parental rights. Although respondent mother insists that she did make progress during the 12 months preceding the termination hearing, having "completed the classes asked of her" and having found employment and housing – even though, as she admits, she "struggled" with those issues – the court's findings make "clear that respondent has not obtained positive results from her sporadic efforts to improve her situation." *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995). This Court has repeatedly emphasized that "[e]xtremely limited progress is not reasonable progress. This standard operates as a safeguard for children. If parents were not required to show both positive efforts and positive results, a parent could forestall termination proceedings indefinitely by making sporadic efforts for that purpose." *In re B.S.D.S.*, 163 N.C. App. 540, 545, 594 S.E.2d 89, 93 (2004) (internal citations and quotation marks omitted).

"Having concluded that at least one ground for termination of parental rights existed, we need not address the additional ground of neglect found by the trial court." *Id.* at 546, 594 S.E.2d at 93-94. Respondent mother has not challenged the dispositional

ruling that termination of her parental rights was in the best interests of the children. We, therefore, affirm the trial court's order terminating respondent mother's parental rights.

Affirmed.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).