NO. COA10-67

NORTH CAROLINA COURT OF APPEALS

Filed: 20 July 2010

IN THE MATTER OF:

B.B., C.B., N.B., N.M., S.B., Minor Children	Brunswick County Nos. 09 JT 27-31

Appeal by respondent mother and respondent father from permanency planning, adjudication, and disposition orders entered 4 August 2008, 30 September 2009, and 13 October 2009 by Judges Thomas V. Aldridge, Jr., and Sherry Dew Tyler in Brunswick County District Court. Heard in the Court of Appeals 28 June 2010.

Jess, Isenberg & Thompson, by Elva L. Jess, for petitioner-appellee the Brunswick County Department of Social Services.

N.C. Administrative Office of the Courts, by Pamela Newell, for guardian ad litem.

Robin E. Strickland for respondent-appellant mother.

Mercedes O. Chut for respondent-appellant father.

ELMORE, Judge.

Respondent mother appeals from the trial court's permanency planning order, entered 4 August 2008, as well as its 30 September and 13 October 2009 adjudication and disposition orders terminating her parental rights to all five juveniles. Respondent father

appeals from the trial court's order terminating his parental rights to juvenile N.M.[1] We dismiss in part and affirm in part.

When N.M. was born in 2005, respondent father was living with his mother and grandmother. Respondent father saw N.M. frequently when he was first born, but did not see N.M. between March of 2005 and July of 2006. Respondent father claimed that he did not know where N.M. was during that time, but that he was "always getting information from other *people* that had seen him." (Emphasis in original.) Respondent father saw N.M. only sporadically after a party in July 2006.

In 2007, respondent mother left all five juveniles in J.B.'s care. On 10 August 2007, the Brunswick County Department of Social Services (DSS) became involved and discovered that J.B.'s home was infested with cockroaches, that J.B. had insufficient food to provide for the juveniles, and that J.B. had been accused of striking and sexually abusing the juveniles. After DSS became involved, N.M. spent "a couple" of nights with respondent father, but respondent father returned N.M. to J.B.'s care at J.B.'s request. On 21 August 2007, DSS filed petitions alleging that juveniles were dependent and neglected, and juveniles were placed in non-secure custody on 21 August 2007. On 2 October 2007, DSS amended the petitions to add an allegation that juveniles were also abused.

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[1] J.B. is the father to B.B., C.B., N.B., and S.B., but is not a party to this appeal.

On 13 September 2007 and 25 October 2007, respondents each signed a family services plan that required them to provide and maintain a safe and stable home for juveniles, complete a psychological evaluation and comply with its recommendations, complete parenting classes, obtain full-time employment sufficient to provide for the family's living expenses, and complete a substance abuse assessment and comply with its recommendations. J.B. was convicted of child abuse and indecent liberties with a minor, and, in December of 2007, respondent mother pled guilty to aiding and abetting J.B. in abusing juveniles and was placed on supervised probation. After respondent mother pled guilty, she agreed to a case plan with DSS.

After a hearing on 4 February 2008, respondent mother and J.B. each admitted that juveniles were neglected. Respondent father was present and represented by counsel and did not object to the admission. The district court adjudicated juveniles neglected. On 13 February 2008, the district court entered a disposition order placing juveniles in DSS custody, leaving placement and visitation in DSS's discretion, and ordering DSS to continue to provide services. Respondents were ordered to comply with the terms and conditions of the family services case plan. Respondent mother and respondent father were married in February 2008.

On 5 May 2008, the district court entered a review order designating concurrent permanent plans of reunification and adoption. The DSS court summary indicated that respondent mother had been released from custody in January 2008 and had visited with

the juveniles since her release. On 4 August 2008, the district court entered a permanency planning order, in which it found that the juveniles could not safely be returned home in six months, and changed the permanent plan to concurrent plans of placement with a court-approved caregiver and adoption.

A 13 January 2009 court summary reported that respondent mother had begun attending classes at a technical school and that respondents were employed. Respondents had also completed parenting classes and psychological assessments, and each demonstrated medium risk in their profiles. Respondents had not obtained suitable housing, could not afford to live in their own trailer, and were living with the juveniles' maternal grandmother. Respondents each failed to comply with DSS's 10 December 2008 request that they submit to a drug screen.

On 12 March 2009, DSS filed a petition to terminate respondents' parental rights to N.M. and petitions to terminate respondent mother's parental rights to B.B., C.B., N.B., and S.B. As grounds for termination, the petitions alleged that the juveniles were neglected, that the juveniles had been removed from the home for more than twelve months and respondents had willfully failed to make reasonable progress toward correction the conditions that led to their removal from the home, and that respondents had willfully abandoned the juveniles. Respondent mother was taken into custody on 6 April 2009 to serve a 12 to 14-month term of imprisonment following a probation violation.

The case came on for hearing in July, August, and September 2009. On 30 September 2009, the trial court entered adjudication orders in which it concluded that all three grounds alleged by DSS to terminate respondent mother's parental rights were supported by the evidence. The trial court also concluded that there were grounds to terminate respondent father's parental rights based on his willful failure to make reasonable progress and willful abandonment. In the disposition orders, filed 13 October 2009, the trial court concluded that it was in the juveniles' best interests to terminate respondents' parental rights. Respondents each appealed from the adjudication and disposition orders.

In her first argument, respondent mother contends that the trial court erred in ceasing reunification efforts in its 4 August 2008 permanency planning order. We dismiss this argument as moot.

"'A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.'" *In re Stratton*, 159 N.C. App. 461, 463, 583 S.E.2d 323, 324 (2003) (quoting *Roberts v. Madison County Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996)).

We have previously observed:

> The purposes associated with a permanency review hearing are "to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C.G.S. § 7B-907(a) (2003). These hearings are generally held "within 12 months after the date of the initial order removing custody" and every six months thereafter. *Id.* The criteria set forth in N.C.G.S. § 7B-907(b) (2003) are designed to ensure that courts adhere to the purposes of the statute. Significantly, we observe there is little

> alignment between the criteria set forth in G.S. § 7B-907(b), and the grounds for termination of parental rights set forth in N.C.G.S. § 7B-1111(a) (2003).

In re V.L.B., 164 N.C. App. 743, 745, 596 S.E.2d 896, 897 (2004).

Our opinion in *In re V.L.B.* is instructive on this issue. In *V.L.B.*, we held that a subsequent termination of parental rights rendered a parent's appeal from a permanency planning order moot. *Id.* In this case, as in *V.L.B.*, the termination of respondent mother's parental rights is not dependent on the prior permanency planning order. The trial court found three grounds for termination of respondent mother's parental rights and made findings of fact and conclusions of law in the termination orders that are entirely independent of the permanency planning order. Further, any findings in the permanency planning order that are also in the termination order are superceded by the termination order. *Id.* ("These circumstances, together with (1) our observation concerning the lack of a direct relationship between the criteria in G.S. § 7B-907(b) and the grounds in G.S. § 7B-1111(a), and (2) our reliance on the principles in *Stratton*, lead us to an inescapable conclusion that [this argument] has become moot.") Accordingly, we dismiss respondent mother's argument relating to the permanency planning order as moot.

In respondent mother's remaining arguments, she challenges the trial court's conclusion that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7) (2010). Respondent mother, however, has not challenged the trial

court's conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2010) to terminate her parental rights.

In the adjudicatory stage, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground for termination exists. N.C. Gen. Stat. § 7B-1109(f) (2010); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). "A finding of any one of the . . . grounds is sufficient to support a termination." *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984); *see also In re S.F.*, ___ N.C. App. ___, __, 682 S.E.2d 712, 718 (2009).

Respondent mother has not challenged the trial court's findings of fact or its conclusion that grounds existed to terminate her parental rights based on N.C. Gen. Stat. § 7B-1111(a)(2). We also note that respondent mother has not challenged the trial court's conclusion that termination of her parental rights was in the juveniles' best interests. Because the unchallenged ground to terminate respondent mother's parental rights is sufficient to support the trial court's termination orders, we affirm without examining respondent mother's arguments as to the other two grounds. *See In re J.M.W., E.S.J.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006).

We next address respondent father's arguments. Respondent father challenges several of the trial court's findings of fact and its conclusion that grounds existed to terminate his parental rights to N.M. pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). We disagree.

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)).

Respondent father first challenges findings of fact 16 and 28:

> 16. That [respondent father] left his son, [N.B.], in the custody and care of [J.B.]
>
> [. . .]
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> 28. That [respondent father] did not see his child at all between March 2005 and July 2006. He saw him on one occasion in July 2006 when he attended a party with all of the children. He began to see him once a week at this time. In July 2007 he had the child for two overnights, but when [J.B.] asked to have him returned because a sibling missed him, [respondent father] returned the child.

These findings are supported by respondent father's own testimony. Respondent father testified that, between March 2005 and July 2006, he did not see N.M. at all, and that N.M. later stayed with him for "a couple of nights" before he returned N.M. to J.B.'s custody. Thus, these findings are supported by competent evidence.

Respondent father next challenges some elements of findings of fact 21, 22, and 23. In finding 21, respondent father objects to the portion of the finding that states he was not making his car

payment and that his car was non-functional. After reviewing the record, we conclude that finding 21 is again supported by respondent father's own testimony. First, respondent father testified that his grandfather was making his car payments for him. Respondent father also testified about the condition of his car:

> Well, the starter is starting to go out, um, I need to keep an e-, an eye out for the manifold because it sounds like it's getting ready to crack; plus, I need to have the brakes replaced.

Respondent father claimed he would get the necessary repairs, but also acknowledged that he did not have any money to have the car fixed. Although respondent father asserted that he still used the car, the trial court's finding that the car was "not functional" is supported by respondent father's own description of the serious mechanical issues. Accordingly, we find that this finding of fact is supported by the evidence.

As to findings 22 and 23, respondent father acknowledges that they are supported by the evidence but contends that they are not relevant to the termination proceeding. These findings summarize respondent father's housing situation and employment status. Accordingly, we conclude that they are highly relevant to the trial court's conclusion that grounds existed to terminate respondent father's parental rights, particularly where the allegations in the petition focused on his inability to provide adequate housing.

Next, respondent father challenges findings 24, 25, and 36, all of which relate to respondent father's failure to comply with the case plan or provide suitable housing for N.M.:

> 24. That until the termination hearing, [respondent father] had never furnished the Department with a budget or demonstrated an ability to maintain monthly finances for himself, let alone a child. In May 2008, [respondents] moved in the Walker Road house, the house from which the children had been removed, in part due to its unsanitary conditions. This house was never an appropriate house for the children.
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> 25. That [respondents] rented a trailer and the Department went to inspect the residence with the guardian ad litem. The house did not have running water or electricity, the power for a light being provided through a drop cord from an adjacent home. [Respondents] did not stay in the house at night because there was no heat. They never had sufficient monies to pay to turn on the electricity.
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> [. . .]
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> 36. That at the family services case plan review on May 29, 2008, the Department requested that it be relieved of reunification due to the failure of the parents to comply with the key components of the case plan. The parents could not provide appropriate housing and could not demonstrate an ability to provide for the needs of the children. [Respondents] had returned to the residence from which the children had been removed and her grandparents were living in the home as well. This residence had holes in the ceiling and walls, the floors were falling in and the heater did not work.

We conclude that these findings are supported by the testimony of social worker Makeba Shaw, who worked with respondents to develop and implement their case plan. Ms. Shaw testified that on 29 May 2008, respondents moved juveniles to their Walker Road home. Juveniles were removed from the home because "[t]he home was very unkempt as far as clothing and, um, a lot of animals in the home and, um, there were also a lot of roaches, and the children came

into custody with, um, with bug bites on them." Ms. Shaw also testified that from the inception of the case in 2007 until the time of the termination hearing, respondent father had not provided a stable residence for N.M., in spite of entering into a case plan that required him to provide suitable housing. When respondent father requested that DSS evaluate a potential residence, DSS found it lacked running water and electricity, and that its light source was powered by an extension cord running from another house. Ms. Shaw also testified that respondent father never provided documentation that he could maintain monthly finances. Accordingly, we conclude that these findings 24, 25, and 36 are supported by competent evidence.

Findings 56 and 58 are more properly characterized as conclusions of law concerning the grounds to terminate respondent father's parental rights, rather than as findings of fact. Thus, we now consider them as we address respondent father's final argument that the trial court erred when it concluded that grounds existed to terminate his parental rights. We disagree.

We note that although the trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) and (7) to terminate respondent father's parental rights, we find it dispositive that the evidence is sufficient to support termination of respondent father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), that N.M. was placed in foster care for more than twelve months and respondent father willfully failed to make reasonable progress toward correcting the conditions that led to

N.M.'s removal from the home. *See Pierce*, 67 N.C. App. at 261, 312 S.E.2d at 903 (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. and O.B., 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) (citation omitted).

In this case, the trial court's findings of fact, which are supported by the evidence, in turn support the trial court's conclusion that respondent father had failed to make reasonable progress. The trial court found that respondent father never supplied a budget to DSS or demonstrated an ability to maintain his

own finances, and that the only home he ever provided for N.M. was unsanitary and inappropriate for juveniles. Respondent father moved five times during the pendency of the case. When DSS inspected respondent father's proposed residence for the family, the home did not have running water, and respondent father was unable to provide electricity or heat the home at night. At one point, respondent father did not see N.M. for more than one year, and after N.M. reunited with respondent father for "a couple" of nights, respondent father returned him to J.B. Although the findings also indicate that respondent father paid support and attended visitation, we conclude that these findings do not negate the trial court's findings that demonstrate that respondent father failed to make progress toward providing a suitable home for N.M. Accordingly, we affirm the trial court's order terminating respondent father's parental rights.

Dismissed in part; affirmed in part.

Judges WYNN and HUNTER, JR., Robert N., concur.

Report per Rule 30(e).