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NO. COA10-724

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

IN THE MATTER OF:

E.R.,

Guilford County  
No. 08 JT 615

Appeal by respondent-mother from order entered 5 March 2010 by Judge Susan E. Bray in District Court, Guilford County. Heard in the Court of Appeals 1 November 2010.

*Mercedes O. Chut for petitioner-appellee, Guilford County Department of Social Services.*

*Smith, James, Rowlett & Cohen, L.L.P., by Margaret Rowlett, for appellee, Guardian Ad Litem.*

*Robert W. Ewing for respondent-appellant, mother.*

STROUD, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights to her daughter, E.R. ("Ella").<sup>1</sup> For the following reasons, we affirm.

#### I. Background

Respondent-mother and the father are the biological parents of Ella, born in May 2007. By order dated 22 August 2008, the trial court gave the Guilford County Department of Social Services

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<sup>1</sup> We will refer to the minor child E.R. by the pseudonym Ella, to protect the child's identity and for ease of reading.

("DSS") nonsecure custody of Ella. Subsequently, on 25 August 2008, DSS filed a juvenile petition alleging that Ella was a neglected and dependant juvenile. The petition alleged that on 19 June 2008 DSS had received a report that Ella had a diaper rash so severe that it was bleeding. The report further alleged that respondent-mother was in jail and the father was unwilling to care for Ella. The father and Ella had moved in with the father's aunt and uncle so that they could care for Ella. While in the care of the paternal relatives, Ella was taken to her pediatrician, who referred Ella to Duke Pediatrics because Ella was not crawling, walking, or talking at age one. The paternal relatives scheduled a medical appointment with a specialist at Duke University for late June. The report further stated that the father would not take Ella to Duke Pediatrics. DSS was informed by Ella's pediatrician that Ella was referred to Duke Pediatrics because of concerns of possible drug exposure in utero and because of the possibility of a genetic disorder that could possibly affect her liver and other internal organs.

Soon thereafter, respondent-mother was released from jail. Respondent-mother, the father, and Ella moved back into their residence. At a 20 June 2008 home visit, respondent-mother and the father told a DSS social worker that they had no intention of taking Ella to Duke Pediatrics because there was nothing wrong with her. Both parents stated that they did not have transportation to take Ella to Duke Pediatrics. Respondent-mother later agreed to take Ella to a geneticist in Winston-Salem on 1 July 2008. DSS

offered to take respondent-mother and Ella to this appointment but respondent-mother refused assistance. However, respondent-mother later informed the DSS social worker that she did not take Ella to the scheduled appointment because of transportation issues. The next available appointment in Winston-Salem was in nine months, so respondent-mother agreed to call other geneticists to obtain an earlier appointment. The DSS social worker gave respondent-mother phone numbers for four medical providers and informed respondent-mother that while she would help her, it was respondent-mother's responsibility to schedule the appointment. The DSS social worker performed a home visit on 31 July 2008 and discovered that respondent-mother had not contacted a geneticist.

On 4 August 2008, respondent-mother reported to the DSS social worker that the father had "raped" her and that he was taking Ella to his mother's house. Respondent-mother later contacted the DSS social worker and told her that the situation had resolved itself and that she was not pressing charges. The DSS social worker received a report on 14 August 2008 that the parents "had gotten into a fight." It was reported by family members to DSS that domestic violence, "both physical and verbal," was a pattern for respondent-mother and the father. The parents admitted to DSS that they had a problem with domestic violence. The parents also informed the DSS social worker that they were both bi-polar and respondent-mother was not taking her medication. The DSS social worker referred the parents to family counseling and the parents agreed to schedule appointments for medication treatment. At a

Team Decision Meeting on 18 August 2008, the parents agreed that Ella was not safe in their home due to the domestic violence and mental health issues and, as a result, made a plan for Ella to stay at her paternal aunt's house. DSS requested that it be given temporary legal and physical custody of Ella. DSS filed an amended juvenile petition on 27 August 2008 further alleging that respondent-mother had made a threat to take Ella and run away and hide, disrupting her current placement with family members.

By orders entered 5 September 2008 and 7 October 2008, the trial court continued non-secure custody of Ella with DSS. Following a hearing on 24 September 2008, the trial court entered an order on 7 November 2008 adjudicating Ella as a neglected and dependent juvenile based upon domestic violence between respondent-mother and the father, the parents' failure to provide proper medical care for Ella, and the parents' mental illness. In its written order, the trial court incorporated DSS's allegations from its 25 August 2008 juvenile petition in its findings of fact. The trial court continued custody of Ella with DSS and ordered both parents to enter into a family service agreement with DSS.

Following a review hearing on 17 December 2008, the trial court continued custody of Ella with DSS; allowed supervised visitation between respondent-mother and Ella; and ordered DSS to "continue to make reasonable efforts towards reunification." The trial court found that Ella was adjusting well in her foster home. The trial court also found that although Ella was 19 months of age, she "functions at a 9 month old level of communication" and "works

with a Community Based Rehabilitation Services therapist once a week to encourage her development." The trial court also found that respondent-mother and the father had entered into separate case plans. Respondent-mother's 10 November 2008 case plan required respondent-mother to: (1) complete a psychological/parenting evaluation and comply with recommendations; (2) complete a domestic violence assessment and follow all recommendations; (3) receive regular medication monitoring and take only medications prescribed by her psychiatrist; (4) maintain monthly contact with the social worker; (5) sign release forms; (6) regularly visit her daughter; and (7) participate in shared parenting through phone calls, face-to-face meetings and correspondence. The trial court ordered respondent-mother to "continue to comply with the conditions of her case plan."

After holding a permanency planning hearing on 25 March 2009, the trial court found that Ella was functioning at approximately 16 months and making "good progress in her development." As to respondent-mother's case plan, the trial court found that respondent-mother had completed her psychological/parenting evaluation, which found that respondent-mother showed narcissistic, dependent, and compulsive characteristics; that she had not completed a domestic violence assessment; that she had not complied with the requirement for regular medication monitoring, as she had missed several appointments; that she had not provided documentation for the services she was receiving; that she had maintained contact with DSS; that she had signed releases of

information; that she had visited Ella regularly; that she was participating in shared parenting; that she was successfully meeting the needs of Ella during visitation; and that she was unemployed and residing with her sister. The trial court further found that "[i]f the mother continues to make progress in her case plan, including compliance, then it is probable that the juvenile will be returned home within six months." The court specifically ordered respondent-mother to contact Family Services of Piedmont about their domestic violence treatment program, attend an intake appointment, and begin the treatment program.

The trial court held another permanency planning hearing on 22 July 2009. By order filed 17 August 2009, the trial court found that respondent-mother had entered into another case plan in April 2009. To help respondent-mother reunify with Ella, the plan required respondent-mother to: (1) comply with recommendations from her psychological/parenting evaluation, which stated that she would benefit from individual counseling and vocational rehabilitation; (2) demonstrate functional independence by meeting her basic needs and attending scheduled appointments; (3) complete a domestic violence assessment at Family Services of the Piedmont and follow all recommendations; (4) continue receiving regular medication monitoring and take only prescribed medications; (5) maintain bi-weekly contact with the social worker; (6) sign release forms; (7) regularly visit her daughter; (8) successfully parent Ella during visits; (9) participate in shared parenting; (10) maintain appropriate housing and sufficient income for herself and her

daughter; (11) provide documentation to the social worker for all services she is receiving; and (12) enter into a voluntary support agreement with Child Support Enforcement. The trial court also found that the parents had an "on again/off again" relationship and both were dependent on their families to support them. The trial court also found that respondent-mother had completed the domestic violence assessment and attended the first six meetings, but that she either left early or missed the remaining meetings. The trial court further found that respondent-mother did not attend a scheduled intake appointment for vocational rehabilitation; that she attended three of her six medication monitoring appointments; and that she was in arrears for her child support. The trial court found that based upon the lack of progress with either parent in completing their case plan and addressing the primary issues that brought Ella into foster care, it was not probable that Ella would return home within the next six months. The trial court ordered the permanent plan be a concurrent plan of adoption and reunification. The court also ordered DSS to proceed with filing a petition for termination of parental rights.

On 21 September 2009, DSS filed a petition to terminate both respondent-mother's and the father's parental rights. DSS alleged that there were grounds to terminate respondent-mother's parental rights based upon neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)(2009); willfully leaving the child in foster care without making reasonable progress under the circumstances, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2)(2009); failing to pay

a reasonable portion of child care, pursuant to N.C. Gen. Stat. § 7B-1111(a) (3) (2009); incapability of providing for the proper care and supervision of the juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a) (6) (2009); and willfully abandoning the juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a) (7) (2009).

The trial court held a permanency planning review hearing on 20 January 2010. By order filed 17 February 2010, the trial court found that respondent-mother and the father, who were living with respondent-mother's sister, entered into a joint case plan in October 2009. The joint case plan required respondent-mother to:

- (1) comply with recommendations from her parenting/psychological evaluation which referred her to individual counseling and vocational rehabilitation services;
- (2) actively participate in the Healthy Start Program and comply with recommendations;
- (3) actively participate in individual therapy through Healthy Start and comply with recommendations;
- (4) contact Vocational Rehabilitation and comply with their application process;
- (5) demonstrate her ability to function independently;
- (6) complete a domestic violence assessment at Family Services of the Piedmont and comply with recommendations;
- (7) receive regular medication monitoring and take only prescribed medications;
- (8) successfully parent Ella by meeting her needs during visitation;
- (9) participate in shared parenting;
- (10) maintain contact with the DSS social worker;
- (11) sign release forms;
- (12) visit with Ella;
- (13) attend all court proceedings in regard to Ella;
- (14) acknowledge her responsibility for Ella being in DSS custody and demonstrate efforts to reunify by

complying with all aspects of the case plan; and (15) enter into voluntary agreement with Child Support Enforcement. The trial court also found that Ella was "doing extremely well" in her foster home and was "very bonded with her foster mother." As to respondent-mother, the trial court found that she brought supplies, snacks, toys, and gifts to the visits, was appropriate and loving during the visits, was in consistent contact with the foster parent and her social worker, and was consistently meeting with the Healthy Start case manager. The trial court, however, also found that while respondent-mother began individual therapy with Healthy Start in September 2009, she did not reschedule appointments she missed due to transportation issues. The court further found that at the last domestic violence treatment meeting respondent-mother attended, which was on 20 July 2009, respondent-mother stated that there was no domestic violence between her and the father. In addition, the trial court found that respondent-mother went off her medication in October 2009 and went back on medication in early November 2009. Finally, the trial court found that both parents continued to blame their families for their problems, lacked compliance with mental health services, lacked the ability or willingness to demonstrate their ability to meet their basic needs and have not addressed domestic violence and relationship issues. The trial court ordered the permanent plan to be one of adoption.

The trial court continued a hearing on the termination petition until 26 January 2010. After conducting a hearing, the trial found grounds to terminate the parental rights of respondent-

mother under sections 7B-1111(a)(1), (2), (3), (6) and (7). The trial court also found grounds to terminate the father's parental rights. The trial court concluded it was in the best interest of Ella to terminate the parental rights of respondent-mother and the father. Only respondent-mother appeals.

## II. Standard of Review

Termination of parental rights involves a two-stage process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). "In the adjudicatory stage, the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). "If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating parental rights is in the best interests of the child." *Id.* at 98, 564 S.E.2d at 602. The trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *Id.*

## III. Grounds for Termination

Respondent-mother contends that the trial court erred by finding and concluding that sufficient grounds existed to terminate her parental rights. Preliminarily we note that although the trial court concluded that grounds existed pursuant to sections 7B-1111(a)(1), (2), (3), (6) and (7) of the North Carolina General Statutes to terminate respondent-mother's parental rights, we find it 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).

N.C. Gen. Stat. § 7B-1111(a) (2) provides a parent's rights may be terminated where:

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. . . .

This Court has noted 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." *In re O.C.*, 171 N.C. App. 457, 464, 615 S.E.2d 391, 396, *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005). Specifically, the trial court must determine by clear, cogent, and convincing evidence that: (1) respondent "willfully" left the juvenile in foster care for more than twelve months, and (2) that respondent failed to make "reasonable progress" in correcting the conditions that led to the juvenile's removal from the home. *Id.* at 464-65, 615 S.E.2d at 396. When determining willfulness, the court must consider whether "respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re Nesbitt*, 147 N.C. App. 349, 360, 555 S.E.2d 659, 666 (2001). Evidence of some progress does not preclude a finding of willfulness. *In re Bishop*, 92 N.C. App. 662, 670, 375 S.E.2d 676, 681 (1989). Respondent-mother contends that the trial court's

findings of fact do not support its conclusion of law that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).<sup>2</sup>

Here, the underlying issues which necessitated the removal of Ella were the domestic violence between the parents and the parents' mental health. The trial court based its conclusion that respondent-mother failed to make reasonable progress to correct the conditions which led to the removal of Ella on numerous detailed findings of fact. In those findings the trial court noted the objectives in respondent-mother's case plan and her failures to meet those objectives: (1) respondent-mother was to establish appropriate housing and income for herself and Ella but her housing situation was still unstable, as she continued to live with her sister, and was unemployed; (2) respondent-mother was to "demonstrate functional independence" by attending her medical and mental health appointments but she was still relying on her sister for housing and transportation; (3) respondent-mother was to continue regular medication monitoring and to take her medications prescribed by the psychiatrist, but she had missed three of her six appointments, went off her medication in October 2009, and, at the

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<sup>2</sup> Respondent-mother contends that the trial court's finding No. 19(b) is not supported by record evidence, but also admits that this is a conclusion of law. We agree with respondent-mother that finding 19(b) is a conclusion of law, which states, "Pursuant to N.C.G.S. §7B-1111(a)(2), the mother has willfully left the juvenile in placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress has been made under the circumstances . . . in correcting those conditions which led to the removal of the juvenile." The issue of whether this conclusion is supported by the trial court's findings of fact is addressed in the analysis below.

time of the hearing, was not taking her medication; (4) respondent-mother was to comply with the recommendations from her parenting/psychological evaluation by attending individual counseling and vocational rehabilitation counseling but she had missed child development, psychological counseling, and vocational rehabilitation appointments; and (5) respondent-mother was to attend a domestic violence assessment and comply with its recommendations but she had failed to attend many of the domestic violence treatment group meetings. Because these findings of fact are not challenged on appeal, we presume them to be supported by competent evidence, and, they are binding on appeal. *In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404 (2005).

Respondent-mother argues that the trial court erred in determining that her failure to make progress in the case was willful. Specifically, respondent-mother contends that "the trial court, when determining the issue of wilfulness, failed to consider her limitations in correcting the conditions which led to her child's removal from her home." She concludes that if the trial court found that she was incapable of taking care of herself because of her mental health issues, "it cannot find that she was willful in failing to make reasonable progress in improving her situation." We disagree. "[O]ur Courts have held that 'a respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions,' and will support a finding of lack of progress during the year preceding the DSS

petition sufficient to warrant termination of parental rights under section 7B-1111(a)(2).” *In re J.W.*, 173 N.C. App. 450, 465-66, 619 S.E.2d 534, 545 (2005) (quoting *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004)), *aff’d per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006). Here, although the trial court’s finding of fact No. 15 states in general that respondent-mother “is incapable of independently providing housing for herself much less her children[,]” this finding is not based on her mental health issues, as respondent-mother suggests, but on her consistent failure to improve issues regarding her functional independence, including her lack of employment or housing; her domestic violence issues; her child support arrears, and her mental health issues, as ordered by the trial court, despite some efforts and the assistance from DSS. Contrary to respondent-mother’s argument, none of the trial court’s findings state that she was incapable of addressing these required goals, as she had made some progress in addressing each, by attending some appointments and meetings with counselors and health care providers, applying for disability, and by participating in some domestic violence counseling. Despite respondent-mother’s argument to the contrary, the trial court’s findings show a “prolonged inability to improve [respondent-mother’s] situation, despite some efforts in that direction,” *J.W.*, 173 N.C. App. at 465, 619 S.E.2d at 545. See also *In re Oghenekevebe*, 123 N.C. App. 434, 440, 473 S.E.2d 393, 398 (1996) (finding respondent willfully left her child in foster care where she did not take advantage of DSS assistance with services such as

counseling and parenting classes to improve her situation); *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224-25 (1995) (holding that the parent's refusal to obtain treatment for alcoholism constituted willful failure to correct conditions that had led to removal of the child from the home). Accordingly, the trial court did not err in holding that respondent-mother's failure to make reasonable progress was willful and respondent-mother's argument is overruled.

Therefore, we conclude that the findings of fact summarized herein, together with the unchallenged finding that Ella was in DSS custody for over 12 months, support the trial court's conclusion that grounds existed for termination under N.C. Gen. Stat. § 7B-1111(a)(2). Accordingly, we affirm the trial court's order terminating respondent-mother's parental rights.

AFFIRMED.

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

Report per Rule 30(e).