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NO. COA10-803

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF:

A.T., T.L., and I.T.,
Minor Children.

Person County
Nos. 05 JA 58-59, 07 JA 19

Appeal by Respondent-Mother from order entered 12 May 2010 by Judge Mark Galloway in District Court, Person County. Heard in the Court of Appeals 22 November 2010.

Thomas L. Fitzgerald for Petitioner-Appellee Person County Department of Social Services.

Windy H. Rose for Respondent-Appellant Mother.

GAL Appellate Counsel Pamela Newell for Guardian ad Litem.

McGEE, Judge.

Respondent-Mother appeals from order entered 12 May 2010, which terminated her parental rights as to her minor children, A.T., T.L., and I.T. (the children). For the reasons stated herein, we affirm.

The Person County Department of Social Services (Petitioner) had received numerous reports concerning the welfare of the children beginning in 1998. Petitioner filed juvenile petitions on 1 July 2005 alleging that A.T., T.L., and three of their siblings were neglected and dependent juveniles. Petitioner took non-secure custody of the children following a report from Respondent-Mother's

brother that Respondent-Mother had left the children with him for a few days, but had failed to return, and he did not know when she would return for the children. The trial court entered its order on adjudication and disposition on 3 November 2005, concluding that A.T., T.L., and two of their siblings were dependent juveniles. The trial court found that one of the siblings was not a dependent juvenile and dismissed the petition as to that child. The trial court further found it was not in the best interest of the children to grant custody to Petitioner. The trial court returned custody of the children to Respondent-Mother, but it ordered Petitioner to supervise custody of the four children in Respondent-Mother's home. The trial court also ordered Respondent-Mother to cooperate with Petitioner's case planning and management recommendations, attend parenting classes, and ensure maintenance of a safe home environment.

Petitioner received two additional reports of abuse of A.T. and T.L. by Respondent-Mother or her boyfriend, and on 13 April 2006, filed motions for review. Petitioner took non-secure custody of A.T. and T.L., but their three siblings remained in Respondent-Mother's home. The three siblings were eventually placed with their fathers and Petitioner ceased its involvement with those three children. Neither the three siblings nor their fathers are parties to this appeal.

After hearings on 22 May, 14 August, and 9 October 2006, the trial court entered two review orders regarding A.T. and T.L. The trial court continued custody of A.T. and T.L. with Petitioner and

ordered Petitioner to develop a plan of supervised visitation for Respondent-Mother. The trial court ordered Respondent-Mother to attend scheduled mental health therapy sessions and follow all recommendations, attend anger management sessions as recommended by her therapist, cooperate with Petitioner's case planning and management recommendations, allow Petitioner access to her home, cooperate with parenting classes and acquire positive parenting skills, and schedule a mental health psychological evaluation and to comply with any recommendations.

Respondent-Mother gave birth to I.T. in February 2007. Petitioner filed a juvenile petition on 21 March 2007. Petitioner alleged in the petition that I.T. was a dependent juvenile and Petitioner took non-secure custody of I.T. After a hearing on 15 June 2007, the trial court entered an order in which it found I.T. to be a dependent juvenile and continued custody of I.T. with Petitioner. In a separate review order from the 15 June 2007 hearing, the trial court found it was in the best interest of A.T. and T.L. for Petitioner to cease efforts to reunify them with Respondent-Mother. After a hearing on 10 March 2008, the trial court entered an order allowing Petitioner to cease reunification efforts with Respondent-Mother.

Petitioner filed motions to terminate Respondent-Mother's parental rights as to the children on 31 December 2008 and 23 January 2009. Respondent-Mother filed answers to the motions on 24 February 2009, generally denying grounds existed to terminate her parental rights. The trial court held a hearing on the motions to

terminate parental rights on 11 and 14 September 2009, and entered its order terminating Respondent-Mother's parental rights to the children on 12 May 2010. The trial court concluded that grounds existed to terminate Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a) (1) (neglect) and (a) (2) (failure to make reasonable progress). Respondent-Mother appeals from the trial court's order.

I.

Respondent-Mother argues that the trial court erred in terminating her parental rights when the trial court did not enter its written order until eight months after the hearing. We agree that the trial court erred in failing to enter its order in a timely manner. However, the trial court's failure is not reversible error.

The North Carolina Juvenile Code sets out several "statutory time limits [that] recognize the critical function of timely entry of orders in cases affecting the welfare of children and are consistent with the Juvenile Code's overarching purpose of achieving safe, permanent homes for children within a reasonable amount of time." *In re T.H.T.*, 362 N.C. 446, 450, 665 S.E.2d 54, 57 (2008). In proceedings to terminate parental rights, N.C. Gen. Stat. § 7B-1109(e) (2009) requires:

[The trial court's] order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of

court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

Our Supreme Court has held that a trial court's failure to adhere to this statutory deadline is error that "arises subsequent to the hearing and therefore does not affect the integrity of the hearing itself." *T.H.T.*, 362 N.C. at 456, 665 S.E.2d at 61. Thus, "a party seeking recourse for such error should petition for writ of mandamus." *Id.* Accordingly, the trial court's failure to adhere to the statutory deadline and timely enter its order terminating Respondent-Mother's parental rights is not reversible error. When the trial court failed to adhere to this statutory deadline, Respondent-Mother should have petitioned this Court to issue a writ of mandamus compelling the trial court to enter its order.

II.

Respondent-Mother next argues the trial court erred in concluding grounds existed to terminate her parental rights because she willfully left the children in foster care for more than twelve months without making reasonable progress to correct the conditions which led to the removal of the children from her home. Respondent-Mother contends this ground was not properly alleged in the motions to terminate her parental rights and thus could not be found by the trial court as a ground supporting termination of her parental rights. We are not persuaded.

A petition or motion to terminate parental rights "shall set

forth . . . [f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6) (2009). "While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002); *see also In re A.H.*, 183 N.C. App. 609, 614, 644 S.E.2d 635, 638 (2007) ("[A] petition will not be held inadequate simply because it fails to allege the precise statutory provision ultimately found by the trial court. Rather, the adequacy of the petition must be measured according to N.C. Gen. Stat. § 7B-1104(6)[.]"). Additionally, "sufficiently detailed allegations need not appear on the face of the petition but may be incorporated by reference." *In re H.T.*, 180 N.C. App. 611, 617, 637 S.E.2d 923, 927 (2006) (citing *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992)).

Grounds for termination of parental rights exist 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. 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.

N.C. Gen. Stat. § 7B-1111(a)(2) (2009). 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 twelve 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.*, 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).

In its motions to terminate Respondent-Mother's parental rights, Petitioner alleged that A.T. and T.L. had not been in Respondent-Mother's custody for more than twenty-eight months, and that I.T. had not been in Respondent-Mother's custody for more than eighteen months. Petitioner further alleged that, in an attempt to reunify the children with Respondent-Mother, Petitioner offered services to Respondent-Mother but she failed to utilize the offered services and was not willing to work with social workers toward reunification. Petitioner also alleged Respondent-Mother had been referred for mental health treatment and counseling, but had been resistant to such counseling and had failed to comply with the recommendations of her therapists and counselors. We conclude that the allegations in the motions to terminate parental rights were sufficient to place Respondent-Mother on notice that termination of her parental rights on the ground that she willfully left the children in foster care for more than twelve months without making reasonable progress to correct the conditions which led to the removal of the children from her home would be an issue at the hearing before the trial court.

Respondent-Mother does not otherwise challenge the trial

court's conclusion that she willfully left the children in foster care for more than twelve months without making reasonable progress to correct the conditions which led to the removal of the children from her home. Nor does Respondent-Mother challenge the trial court's findings of fact in support of this ground and, thus on appeal, they are binding on this Court. See *In re S.C.R.*, ___ N.C. App. ___, ___, 679 S.E.2d 905, 909 ("[T]he trial court's findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court." (citing *In re J.D.S.*, 170 N.C. App. 244, 250-51, 612 S.E.2d 350, 354-55, cert. denied, 360 N.C. 64, 623 S.E.2d 584 (2005))), appeal dismissed, 363 N.C. 654, 686 S.E.2d 676 (2009). Accordingly, we hold the trial court did not err in concluding grounds existed to terminate Respondent-Mother's parental rights in that she willfully left the children in foster care for more than twelve months without making reasonable progress to correct the conditions which led to the removal of the children from her home. See *In re J.M.W.*, 179 N.C. App. 788, 792, 635 S.E.2d 916, 919 (2006) (affirming termination of parental rights where the unchallenged ground found by the trial court was sufficient to support the trial court's order).

Because we find a ground for termination of parental rights was properly established pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), we need not address Respondent-Mother's further arguments regarding the trial court's conclusion that grounds to terminate her parental rights also existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). N.C. Gen. Stat. § 7B-1111(a) (2009) ("The

court may terminate the parental rights upon a finding of one or more of the following[grounds.]"); see also *In re D.B.*, 186 N.C. App. 556, 561, 652 S.E.2d 56, 60 (2007) ("Where a trial court concludes that parental rights should be terminated pursuant to several of the statutory grounds, the order of termination will be affirmed if the court's conclusion with respect to any one of the statutory grounds is supported by valid findings of fact."), *aff'd per curiam*, 362 N.C. 345, 661 S.E.2d 734 (2008).

III.

Respondent-Mother next argues the trial court erred in determining the best interest of the children would be served by terminating her parental rights because the trial court did not consider the likelihood of the adoption of the children. We disagree.

When determining whether it is in the best interest of a child to terminate parental rights, the trial court must consider the following factors:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2009). "The decision to terminate parental rights is vested within the sound discretion of the trial judge and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citation omitted). This Court has held that a trial court does not abuse its discretion in terminating parental rights where it omits a finding on a statutory factor, so long as it is apparent the trial court considered all of the relevant factors. *In re S.C.H.*, ___ N.C. App. ___, ___, 682 S.E.2d 469, 475 (2009) (holding the trial court did not abuse its discretion where there was no specific finding regarding the bond between the parent and the child), *aff'd per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010); *but compare In re S.R.*, ___ N.C. App. ___, 698 S.E.2d 535 (2010) (affirming an order terminating parental rights where the trial court "did not make specific findings regarding the bond between respondent-mother and the juveniles and the bond between the foster parents and the juveniles" but there was "evidence in the record [that] demonstrate[d] that the trial court considered these factors in making its dispositional decision"), *with In re E.M.*, ___ N.C. App. ___, 692 S.E.2d 629 (2010) (reversing an order terminating parental rights where the order did "not consider the likelihood of adoption of the juvenile, the bond between the juvenile and the parent, or the quality of the relationship between any prospective adoptive parents, custodian, or guardian and the juvenile" even though there was evidence in the record "from which the court could

make findings as to these factors").

In the present case, Respondent-Mother argues the trial court did not consider one of the factors enumerated in N.C. Gen. Stat. § 7B-1110(a), the likelihood of the adoption of the children. However, Respondent-Mother admits in her brief that the trial court clearly considered this factor when it rendered its order at the conclusion of the hearing, stating "the bond between the mother and the children is insufficient to justify continued relationship when compared with the possibility of adoption and for the other reasons alleged in the petition and in the evidence." While "the better practice is for trial courts to make specific findings related to the factors listed in section 7B-1110(a) in orders terminating parental rights," *S.R.*, ___ N.C. App. at ___, 698 S.E.2d at 542, we hold the trial court properly considered all of the relevant factors set forth in N.C. Gen. Stat. § 7B-1110(a) before concluding it was in the best interest of the children to terminate Respondent-Mother's parental rights. Moreover, we cannot say the trial court's conclusion that it was in the best interest of the children to terminate Respondent-Mother's parental rights was manifestly unsupported by reason. Accordingly, we affirm the order of the trial court terminating Respondent-Mother's parental rights as to her minor children, A.T., T.L., and I.T.

Affirmed.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).