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NO. COA11-435  
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

IN THE MATTER OF:

A.R.G. and D.T.G.	Macon County
Two Juveniles.	Nos. 09 JA 2-3

Appeal by respondent-mother from adjudication order entered 2 September 2010 and disposition order entered 29 November 2010 by Judge Steven J. Bryant in Macon County District Court. Heard in the Court of Appeals 5 September 2011.

*William R. Shilling for Macon County Department of Social Services petitioner-appellee.*

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

*Pamela Newell for guardian ad litem.*

McCULLOUGH, Judge.

Respondent-mother appeals from the 29 November 2010 disposition order terminating her parental rights to A.R.G. and D.T.G. ("the children"). Respondent-mother has also filed a petition for writ of certiorari seeking review of the adjudication order entered 2 September 2010 in which the trial court found grounds existed to terminate her parental rights.

On the evening of 11 January 2009, the Franklin Police Department contacted Macon County Department of Social Services ("DSS") regarding the children. The children were present during a domestic violence incident involving respondent-mother and her boyfriend, J.W. During the incident, J.W. hit D.T.G. On 12 January 2009, DSS filed juvenile petitions alleging the children were neglected juveniles in that they did not receive proper care, supervision, or discipline from their parent and they lived in an environment injurious to their welfare. The children were also alleged to be dependent. The children were placed in DSS's custody.

On 5 March 2009, the matter came on for adjudication and disposition. The trial court adjudicated the children neglected and dependent. DSS retained custody of the children and respondent-mother was ordered to comply with a case plan in order to achieve reunification.

The trial court conducted a permanency planning review hearing on 13 April 2010. The trial court relieved DSS of having to make further efforts toward reunification and changed the permanent plan to termination of parental rights and adoption. The trial court ordered DSS to file a motion seeking

termination of parental rights within sixty days of the trial court filing its order.

On 20 May 2010, DSS filed a motion seeking termination of respondent-mother's parental rights. DSS alleged grounds existed to terminate respondent-mother's parental rights on the basis of neglect and that respondent-mother willfully left the children in foster care for more than twelve months without showing reasonable progress under the circumstances to correct the conditions which led to the children's removal. The termination of parental rights adjudication hearing was held on 12 August 2010. The trial court entered its order on 2 September 2010, finding grounds existed to terminate respondent-mother's parental rights. The disposition hearing was held on 25 October 2010. On 29 November 2010, the trial court entered its disposition order terminating respondent-mother's parental rights.

Respondent-mother filed written notice of appeal from the disposition order on 15 December 2010. Respondent-mother's notice of appeal failed to refer to the adjudication order entered on 2 September 2010. "[A] notice of appeal [must] designate the order from which appeal is taken." *In re D.R.F.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 693 S.E.2d 235, 238, (quoting *In re*

A.L.A., 175 N.C. App. 780, 782, 625 S.E.2d 589, 590-91 (2006)), *disc. review dismissed*, \_\_\_ N.C. \_\_\_, 705 S.E.2d 359 (2010). Respondent-mother has filed a petition for writ of certiorari, pursuant to N.C. R. App. P. 21 (2009), seeking review of the trial court's adjudication order. In light of the importance of issues involving the relationship between parents and their children, we believe it is appropriate to exercise our discretion and allow respondent-mother's petition for writ of certiorari.

The trial court found grounds existed to terminate respondent-mother's parental rights on the basis of neglect and that respondent-mother willfully left the children in foster care for more than twelve months without showing reasonable progress under the circumstances to correct the conditions which led to the children's removal. On appeal, respondent-mother first argues the trial court's findings of fact do not support a conclusion that she willfully left her children in foster care. Respondent-mother argues the findings do not address the issue of willfulness because she substantially complied with her case plan.

The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and

convincing evidence 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), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). A trial court may terminate parental rights on the ground that "[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." N.C. Gen. Stat. § 7B-1111(a)(2) (2009). "Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001). "A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995).

The trial court made the following pertinent findings of fact:

43. That on May 12, 2010, Deputy Jennifer Leandro was called to the residence of [respondent-mother]. That upon her arrival, Deputy Leandro noticed that [respondent-mother] had a knot on her head. That [respondent-mother] informed Deputy Leandro

at that time that [J.W.] had struck her on the head and that she intended to take out a domestic violence petition against [J.W.].

44. That subsequent to the filing of the DSS motion seeking termination of parental rights, [respondent-mother] married [J.W.], who is the perpetrator of the acts of domestic violence against [respondent-mother] and the minor children.

45. That on at least three occasions since the minor children came into the custody of DSS, [respondent-mother] has been advised by DSS that continued association with [J.W.] would be detrimental to the return of the minor children to her custody given the history of domestic violence that lead [sic] to the children being removed from her home at the outset of these matters.

46. That [respondent-mother] testified that she has been assaulted by [J.W.] at least three or four times during their multi-year relationship.

47. That since 2004, [respondent-mother] has exposed [A.R.G.] & [D.T.G.] to a pattern of domestic violence wherein she exposes the children to acts of domestic violence, then places the children back into situations where domestic violence is occurring or where [respondent-mother] reasonably knows that domestic violence will occur.

48. That [respondent-mother] has taken out domestic violence petitions against [J.W.] over the months of these matters, but then dismissed each petition.

Respondent-mother does not challenge these findings of fact and they are deemed "supported by competent evidence and [are]

binding on appeal." See *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The findings demonstrate respondent-mother failed to address the conditions that led to the children's removal. In fact, when asked why she married J.W. after being advised her relationship with J.W. was not in the children's best interest, respondent-mother replied, "Because I want to. It's simple." We therefore conclude the trial court's findings of fact support the conclusion that grounds existed to terminate respondent-mother's parental rights on the basis that she willfully left the children in foster care for more than twelve months without showing reasonable progress in remedying the issues that led to removal. Having concluded that one ground for termination of parental rights exists, we need not address the additional ground found by the trial court. *In re Brim*, 139 N.C. App. 733, 743, 535 S.E.2d 367, 373 (2000). Respondent-mother does not challenge the trial court's disposition order.

Affirmed.

Chief Judge MARTIN and Judge STEELMAN concur.

Report per Rule 30(e).