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NO. COA12-605  
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

IN THE MATTER OF:

Vance County  
Nos. 09 JT 7, 8, 10-12

R.D., S.E.D., A.F. Jr.,  
M.S., T.S.

Appeal by respondent from order entered 9 February 2012 by Judge J. Henry Banks in Vance County District Court. Heard in the Court of Appeals 23 October 2012.

*Caroline S. Burnette for petitioner-appellee Vance County Department of Social Services.*

*Staples Hughes, Appellate Defender, by Annick Lenoir-Peek, Assistant Appellate Defender, for respondent-appellant mother.*

*Winston & Strawn LLP, by Stacie C. Knight, for guardian ad litem.*

THIGPEN, Judge.

Respondent, the mother of the juveniles, appeals from an order terminating her parental rights to R.D., S.E.D., A.F. Jr., M.S., and T.S. (together, "the juveniles"). After careful review, we affirm.

On 13 January 2009, the Vance County Department of Social Services ("DSS") filed petitions alleging that R.D., S.E.D., A.F. Jr., M.S., and T.S. were neglected juveniles. DSS alleged that on 22 April 2008, respondent called the police because the juveniles' father/stepfather ("A.F.") pushed her into a wall and verbally abused her. The police reported that upon their arrival they found respondent "cursing and hostile." A.F. was arrested and charged with Domestic Assault on a Female. On 19 July 2008, A.F. entered the Henderson Mini Mart while holding a rag to a stab wound on his chest. A.F. claimed that his girlfriend "Tiffany Harris" had stabbed him, but a police investigation determined that respondent, who was pregnant at the time, was the actual perpetrator.

On 12 September 2008, respondent and her family moved to a new residence after being evicted from their home where they had been living for four months without electricity.

On 24 November 2008, A.F. physically assaulted respondent at their place of employment, which resulted in his termination from employment. The argument between respondent and A.F. escalated upon their return home where A.F. ripped the phone out of the wall so respondent could not contact the police. He then proceeded to strangle her. Social workers arrived at the residence and observed four holes in the wall where A.F. had pushed respondent. On 25 November 2008, it was discovered

through interviews with the juveniles that R.D. had previously attempted to stop the physical altercations between respondent and A.F. On 16 and 17 December 2009, respondent either failed to appear or appeared late for Child and Family Team Meetings scheduled to address respondent and A.F.'s behavior. On 22 December 2008, respondent admitted to a social worker that there had been another physical altercation between A.F. and herself in the presence of the juveniles and that R.D. may have been hit with a cup, resulting in a bruise on her arm. On 12 January 2009, respondent and A.F. were in the process of being evicted for non-payment of rent.

DSS did not initially file a motion for non-secure custody, but filed a motion on 23 January 2009 following a confrontation with respondent at her home. DSS alleged it had received information that the juveniles were living in a home without heat and went to respondent's home to investigate and offer assistance. Upon their arrival, DSS found respondent and A.F. cursing at one another. Respondent told DSS in the presence of the juveniles that if the police came she would "shoot every last one[.]" Nevertheless, DSS called the police, but when the police arrived, the juveniles and A.F. were no longer present. Respondent refused to disclose their whereabouts. DSS claimed

that A.F. "took the children out the back door so that [DSS] could not remove the children from the home."

On 18 March 2009, the juveniles were adjudicated neglected based on the parties' stipulation that "the juveniles live in an environment injurious to their welfare due to domestic violence issues[.]" The trial court ordered that the plan for the juveniles was reunification and a concurrent plan was custody with a court approved caretaker or relative. The court ordered respondent to enter into a case plan in order to achieve reunification with the juveniles. The case plan included the following: (1) participating in and successfully completing parenting classes; (2) maintaining stable housing; (3) submitting to a mental health assessment and following all recommendations; (4) submitting to domestic violence counseling; (5) submitting to a substance abuse assessment and following all recommendations; (6) submitting to random drug screens if DSS deemed it necessary; and (7) maintaining stable employment or showing the ability to financially support the children.

A permanency planning review hearing was held on 9 March 2011, nearly two years after the adjudication of neglect, at which time the court found that respondent still had not completed her case plan. Specifically, the court found that

respondent had not continued with mental health treatment or consistently visited with the juveniles. Moreover, the court noted that domestic violence continued to occur between respondent and A.F., citing the fact that A.F. was incarcerated on charges of assault on a female in which respondent was the victim. Consequently, the court found that the conditions which led to removal of the juveniles, particularly domestic violence, continued to exist. Accordingly, the court authorized DSS to cease reunification efforts and changed the permanent plan for the juveniles to custody with a court approved caretaker with a concurrent plan of adoption.

On 16 May 2011, DSS filed motions to terminate respondent's parental rights. DSS claimed that respondent had willfully failed to correct the conditions which led to the removal of the juveniles. DSS alleged the following:

That [respondent] has tested positive for cocaine, she has not completed any individual therapy, she has not completed anger management, [she] was engaging in a relationship in which there was domestic violence which has ceased now due to the fact that [A.F.] is incarcerated, and [she] does not have stable housing or income to provide for the child.

Hearings were held on the motions to terminate parental rights on 16 November 2011, 9 December 2011, and 4 January 2012. On 9

February 2012, the trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate respondent's parental rights and that it was in the best interest of the juveniles that respondent's parental rights be terminated. Respondent appeals.

Respondent first argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate her parental rights. N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. "A finding of any one of the [separately enumerated] grounds" is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "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 D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. review denied, appeal dismissed*, 353 N.C. 374, 547 S.E.2d 9 (2001)).

To terminate a parent's rights under N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must perform a two-part analysis. "The trial court must determine by clear, cogent and convincing

evidence" the following: (1) "a child has been willfully left by the parent in foster care or placement outside the home for over twelve months"; and (2) "the parent has not made 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 (internal citations omitted), *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005).

Here, respondent challenges the conclusion that she failed to make reasonable progress towards correcting the conditions which led to the removal of the juveniles. The condition which led to the removal of the juveniles was primarily domestic violence, and respondent stipulated to domestic violence being the cause of neglect upon the adjudication of the juvenile petition. To address this issue, the trial court ordered respondent to enter into a case plan with DSS that would address her mental health and domestic violence issues, among other issues. However, at a permanency planning review hearing held on 29 September 2010, over eighteen months following the adjudication of neglect, the trial court found that the conditions which led to the removal of the juveniles continued to exist. The court ordered respondent to "comply with her case

plan . . . and [to] demonstrate proficiency." The court further warned respondent that "[h]er time frame to complete this case plan shall be short as the children have been in care for a significant period of time." A key component in the case plan to which respondent agreed and which was emphasized by the trial court in its review order was that respondent mother "consistently attend her therapy sessions on a *weekly* basis which shall address anger management as well as domestic violence." (emphasis in original).

In its order terminating her parental rights, the trial court found the following:

22. The mother has not consistently participated in individual or group therapy as recommended by her therapist. The mother was ordered to attend therapy weekly but she has not and stated that she did not go weekly because her therapist told her while her appointments were made weekly, she only had to come once per month.

The record supports the respondent's claim that her therapist told her she was not required to attend therapy on a weekly basis. However, to address her domestic violence issues, the trial court required her to attend therapy *weekly*. Respondent was aware of this requirement, and no discretion was left to either respondent or her therapist to reduce the frequency of her therapy appointments. The record further demonstrates that



respondent had access to therapy on a weekly basis, and often failed to attend. Respondent's failure to address her anger management issues was borne out by her arrest in September 2011 for communicating threats. Respondent alternatively asserts that any failure on her part to make sufficient progress was due to poverty. See N.C. Gen. Stat. § 7B-1111(a)(2) (stating 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"). We are not persuaded. It is apparent that the trial court did not base termination of respondent's parental rights on her poverty, but on her failure to address her issues with domestic violence. Respondent has been afforded ample time to show whether she is able to maintain a safe, stable environment for the children, and she has been unable to make the progress necessary to make this happen. Consequently, we hold that the trial court's findings regarding respondent's failure to attend therapy as ordered by the court support its conclusion that she willfully failed to make reasonable progress towards correcting the conditions which led to the removal of the juveniles from her care.

Respondent-mother next argues that the trial court abused its discretion when it concluded that termination of her

parental rights was in the best interests of the juvenile. Once statutory grounds for termination have been established, the trial court is required to "determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2011). When determining whether it is in the juvenile's best interest to terminate the parent's rights, the trial court is required to make written findings regarding the relevant factors enumerated in N.C. Gen. Stat. § 7B-1110(a). *Id.* "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002) (citation omitted).

Respondent contends that the trial court (1) failed to make sufficient findings of fact; (2) did not give proper consideration to the fact that R.D. and T.S. wished to return to her care; and (3) that R.D. and T.S. would be required to give their consent to adoption in accordance with N.C. Gen. Stat. § 48-3-601(1) (2011). We disagree.

First, in addition to making a finding of fact regarding the age of the juveniles, the trial court found as fact the following:

34. The older children have a bond with their mother.

35. The younger children, [A.F. Jr. and

M.S.], do not have a bond with the mother as she has not been a consistent part of their lives.

36. [A.F. Jr, M.S. and S.D.] have potential of being adopted immediately.

37. There is nothing to hinder [R.D. and T.S.] from being adopted immediately.

38. The only barrier to adoption is the termination of the mother's parental rights.

The trial court's written findings of fact demonstrate that it sufficiently considered the relevant factors enumerated in N.C. Gen. Stat. § 7B-1110(a). Furthermore, respondent overstates the two juveniles' wishes regarding their desire to return to respondent and not be adopted. While the evidence shows that the two juveniles did state a preference to return to respondent's care, they also indicated a willingness to either return to or be adopted by their former or present foster parents should they be unable to return to respondent's care. Based on the court's dispositional findings of fact, we conclude that the trial court's determination that it was in the juveniles' best interest to terminate respondent's parental rights was not manifestly unsupported by reason. Accordingly, we affirm.

AFFIRMED.

Judges CALABRIA and BEASLEY concur.

Report per Rule 30(e).