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NO. COA12-665
NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2012

IN THE MATTER OF:

M.A.M.C.

New Hanover County
No. 10 JT 209

Appeal by respondent-mother from order entered 23 February 2012 by Judge Melinda H. Crouch in New Hanover County District Court. Heard in the Court of Appeals 9 October 2012.

Gail E. Carelli for petitioner-appellee, New Hanover County Department of Social Services.

Michael N. Tousey for Guardian ad Litem.

Ryan McKaig for respondent-appellant mother.

THIGPEN, Judge.

Respondent-mother appeals from an order terminating her parental rights to her daughter, M.A.M.C. For the following reasons, we affirm.

On 21 June 2010, the New Hanover County Department of Social Services ("DSS") filed a petition alleging that M.A.M.C., born March 2009, was a neglected and dependent juvenile. DSS

alleged that respondent-mother and the father have a history of domestic violence; that respondent-mother and father lack stable housing as they are in danger of eviction; that respondent-mother and the father have not cooperated with services provided by DSS; and that respondent-mother "appears to have mental health issues and is lacking parental skills." DSS assumed non-secure custody of M.A.M.C. The trial court held a hearing on the petition in August 2010. By order filed 7 September 2010, the trial court adjudicated M.A.M.C. a neglected and dependent juvenile based upon the stipulation of respondent-mother and the father to the facts set out in the petition. The trial court ordered respondent-mother to complete all activities outlined in her family service case plan and to follow all recommendations. After holding a permanency planning hearing in April 2011, the trial court ceased reunification efforts because respondent-mother and the father had not made progress on their respective case plans and ordered that the permanent plan be one of adoption.

On 5 October 2011, DSS filed a petition to terminate the parental rights of respondent-mother and the father. DSS alleged that grounds existed to terminate respondent-mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (neglect);

N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress); N.C. Gen. Stat. § 7B-1111(a)(3) (failure to pay reasonable cost of care for the child); and N.C. Gen. Stat. § 7B-1111(a)(6) (dependency). After holding a hearing, the trial court found grounds to terminate the parental rights of respondent-mother based upon neglect, failure to make reasonable progress, and dependency. The trial court found that it was in the best interest of M.A.M.C. to terminate respondent-mother's parental rights. The trial court also terminated the father's parental rights. Respondent-mother appeals.

I. Standard of Review

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (internal citation and quotation marks omitted).

II. Grounds for Termination

Respondent-mother contends the trial court erred by finding and concluding that sufficient grounds existed to terminate her parental rights. We note that although the trial court

concluded that grounds existed pursuant to sections 7B-1111(a)(1), (a)(2), and (a)(6), 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).

Under section 7B-1111(a)(2) of the North Carolina General Statutes, a 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) (2011). It is well settled that willfulness under the statute "may be found where even though a parent has made some attempt to regain custody of the child, the parent has failed to show 'reasonable progress or a positive response to the diligent efforts of DSS.'" *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 662 (2003) (citation omitted).

To support the trial court's conclusion that respondent-mother willfully left M.A.M.C. in foster care for more than

twelve months without making reasonable progress under the circumstances, the trial court made the following findings of fact:

7. Ella Deaver, social worker with the New Hanover County Department of Social Services testified that she has been the assigned social worker for the [] family since July 2010 and is still the assigned social worker at the present time. That Ms. Deaver testified to, and the Court finds as fact that: [respondent-mother and the father] were ordered at disposition in August 2010 to complete parenting classes; . . . and [respondent-mother] was ordered to complete an Empowerment Class. That at a later review hearing, [respondent-mother] was ordered to submit to a psychological evaluation and follow the recommendations from said evaluation. That attempts to engage [respondent-mother] in services proved challenging, as she moved several times during the course of the Department's attempts to reunify the family. That between February 2010, and the date of this hearing, [respondent-mother] at various times lived in various locations throughout North Carolina, including Wilmington (New Hanover County), Burlington (Alamance County), Boiling Springs (Cleveland County), and Southport (Brunswick County), as well as Woodstock (Shenandoah County), Virginia. That [respondent-mother] did not settle in any one place long enough to engage in and complete any of her court-ordered services. That during the five-month period [respondent-mother] lived in Virginia, she did not have consistent visitation with her daughter other than occasional telephone and Skype contact. That [respondent-mother] completed a Parenting Class through the CAPP Program in New Hanover County. That

[respondent-mother] testified to attending eight therapy sessions with therapist Katherine Martin, where they discussed communication and parenting skills. That [respondent-mother] testified, and the Court also finds as fact that at no time did [respondent-mother] ever address her diagnosis of Dependent Personality Disorder with her therapist. . . . That neither [respondent-mother] nor [the father] has been able to adequately address the causes of the neglect

8. Dr. Len Lecci was accepted by the Court and qualified as an expert witness in the field of psychotherapy. Dr. Lecci testified and the Court finds as fact that: he conducted a psychological evaluation of [respondent-mother] on November 10, 2010. That [respondent-mother] has significant cognitive deficits, with a full scale I.Q. of 79. That [respondent-mother] scored low on a measure on common sense, moral reasoning and judgment, with these abilities being critical to parenting. That [respondent-mother] has been diagnosed by Dr. Lecci with Post Traumatic Stress Disorder (PTSD), and Dependent Personality Disorder. That Dr. Lecci recommended psychotherapy for the personality disorder, and an evaluation for medication management for the PTSD. That Dependent Personality Disorder is characterological in nature, and can only be overcome with consistent, intensive psychotherapy. That [respondent-mother], at the time of her evaluation, was not capable of safely parenting a child due to her untreated mental disorders. That Dependent Personality Disorder manifests itself in such people as [respondent-mother], who have a past history of physical and sexual abuse. Dr. Lecci opined that language may have had an effect on [respondent-mother's] test scores and

ability to process and acquire new information and novel concepts, and that he compensated for this possibility when computing her scores. That [the] Court finds as fact that [respondent-mother's] mental disorders remain untreated. Further that [respondent-mother's] past history as well as her conduct throughout the pendency of these proceedings, evidenced by an ongoing propensity to invest in relationships of convenience without regard to their potential for abusive outcomes, poses an ongoing risk to her child.

9. Yvonne Pagan testified and the Court finds as fact [that] she has a Master['s] Degree in Social Work and works with victims of domestic violence at the Open Gate domestic violence shelter. [Respondent-mother] was ordered at disposition in August 2010, to attend the domestic violence empowerment group. That [respondent-mother] has attended approximately 25 sessions. During the sessions she shares with other participants what she has learned, monitors her group members and gives her support to them. That [respondent-mother] is still involved in the program but has attended only two sessions since November 2011. That Ms. Pagan reviewed [respondent-mother's] psychological evaluation and referred [respondent-mother] to Coastal Behavioral Services for individual therapy to address her diagnosis of Dependent Personality Disorder. That no evidence has been presented that [respondent-mother] ever followed this recommendation.

Respondent-mother argues that these findings of fact are not supported by clear, cogent, and convincing evidence. We disagree. Here, finding of fact 7 is supported by the testimony

of DSS social worker Ella Deaver and respondent-mother's own testimony. Finding of fact 8 is supported by the testimony of Dr. Len Lecci and his psychological evaluation of respondent-mother. Contrary to respondent-mother's assertion, the November 2010 psychological evaluation is not so remote in time for it not to be considered clear, cogent, and convincing evidence. Finally, finding of fact 9 is supported by the testimony of Yvonne Pagan. The trial court's findings of fact show that respondent-mother did not address her dependent personality disorder as her case plan and the trial court required. Despite having completed some aspects of the plan, the trial court properly concluded that respondent-mother willfully failed to make reasonable progress. We hold that the trial court's findings of fact provide ample support for the trial court's conclusion of law that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2) supporting termination of respondent-mother's parental rights.

III. Best Interest

Respondent-mother also contends the trial court abused its discretion in concluding that the termination of her parental rights was in the best interest of M.A.M.C. We disagree.

In determining whether termination of parental rights is in

a juvenile's best interest, a trial court is required to consider the following, relevant 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; and (6) any relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2011). "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).

Here, the trial court's findings of fact show that: M.A.M.C. is almost three years old; M.A.M.C.'s likelihood of adoption is strong; the foster parent wishes to adopt M.A.M.C.; termination of parental rights will aid in accomplishing the permanent plan of adoption; there is a bond between M.A.M.C. and respondent-mother; and M.A.M.C. has bonded with the foster parent, with whom she has a strong and supportive relationship. These findings of fact are supported by social worker Ella Deaver's testimony during the disposition hearing and by the Guardian ad Litem's January 2012 court report. Based upon the

trial court's findings, which show that the trial court considered the factors under N.C. Gen. Stat. § 7B-1110(a), we conclude that the trial court did not abuse its discretion in its determination that terminating the parental rights of respondent-mother was in the best interest of M.A.M.C.

In sum, we affirm the trial court's order terminating the parental rights of respondent-mother.

AFFIRMED.

Judges CALABRIA and BEASLEY concur.

Report per Rule 30(e).