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NO. COA12-984  
NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2012

IN THE MATTER OF:

Sampson County  
No. 10 JT 73

M.L.M.

Appeal by Respondent-Father from judgment entered 16 May 2012 by Judge William M. Cameron, III, in Sampson County District Court. Heard in the Court of Appeals 3 December 2012.

*Warrick and Bradshaw, P.A., by Frank L. Bradshaw, for petitioner-appellee, Sampson County Department of Social Services.*

*Alston & Bird LLP, by Matthew P. McGuire and Anitra Goodman Royster, for Guardian ad Litem.*

*Peter Wood for respondent-appellant, father.*

ERVIN, Judge.

Respondent-Father Charlie M. appeals from an order terminating his parental rights in his daughter, M.L.M.<sup>1</sup> On appeal, Respondent-Father contends that the trial court erred by finding that grounds for terminating his parental rights in

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<sup>1</sup>M.L.M. will be referred to throughout the remainder of this opinion as "Melinda," a pseudonym used for ease of reading and to protect the juvenile's privacy.

Melinda existed based upon the application of an incorrect legal standard. After careful consideration of Respondent-Father's challenge to the trial court's order in light of the record and the applicable law, we conclude that the trial court's order should be affirmed.

I. Factual Background

On 29 July 2010, the Sampson County Department of Social Services filed a petition alleging that Melinda was a neglected and dependent juvenile. In its petition, DSS alleged that Melinda was born with cocaine in her system; that Melinda's mother relinquished her parental rights in Melinda soon after the child's birth; and that Respondent-Father could not provide DSS with an address at which he actually lived. On the same date that it filed the petition, DSS took nonsecure custody of Melinda.

After a paternity test established that Respondent-Father was, in fact, Melinda's father, DSS and Respondent-Father entered into an out-of-home service agreement on 23 November 2010. According to the terms of this agreement, Respondent-Father was required to submit to random alcohol and drug screens, maintain stable housing and employment, complete parenting classes, and demonstrate appropriate parenting skills.

On 14 January 2011, Melinda was adjudicated a neglected and dependent juvenile. In a separate disposition order, the court provided for supervised visitation between Melinda and Respondent-Father and ordered that reunification efforts be undertaken. At a subsequent review hearing held on 27 October 2011, the court determined that reunification efforts should cease. On 22 November 2011, DSS filed a petition seeking the termination of Respondent-Father's parental rights in Melinda.

On 16 May 2012, the trial court entered an order concluding that Respondent-Father's parental rights in Melinda were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress) and that Melinda's best interests would be served by the termination of Respondent-Father's parental rights. Respondent-Father noted an appeal to this Court from the trial court's order.

## II. Legal Analysis

In his brief, Respondent-Father argues that the trial court erred by concluding that his parental rights in Melinda were subject to termination based upon his alleged failure to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2). We do not find Respondent-Father's argument persuasive.

In reviewing an order terminating a parent's parental rights in a juvenile, this Court must determine whether the

trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the trial court's conclusions of law. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 58-59 (2008), *aff'd*, 363 N.C. 368, 677 S.E.2d 455 (2009). "The trial court's conclusions of law are fully reviewable *de novo* by the appellate court." *Id.* at 146, 669 S.E.2d at 59 (internal quotation marks omitted). We will now utilize this standard of review to evaluate the validity of Respondent-Father's challenge to the trial court's order.

A parent's rights in a child are subject to termination in the event that the trial court determines that:

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). The word "willfulness" as used in N.C. Gen. Stat. § 7B-1111(a)(2) does not imply fault on the part of the parent; instead, the necessary "willfulness" exists "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, *disc.*

*review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). Even if a parent has made some effort to address the problems that led to the placement of the child in foster care, a trial court may still find the "willfulness" necessary to support the termination of a parent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). *See Id.*

In its order, the trial court made the following findings of fact pertaining to the "willfulness" issue:

15. That the Respondent Father entered into an out of home service agreement with the Sampson County Department of Social Services on or about November 23, 2010, and said agreement obligated the Respondent Father to do the following: submit to random alcohol and drug screenings; maintain stable housing and employment; complete parenting classes; and demonstrate appropriate parenting skills.
16. That the Respondent Father did submit to drug screenings on December 14, 2010, and September 8, 2011, and the drug screenings were negative.
17. That the Respondent Father was asked to complete a drug screening on September 30, 2011, and the Respondent Father was led to the second floor of the Department of Social Services' building to the Health Department's facilities and the Respondent Father signed in.
18. That the Respondent Father subsequently left the Health Department's facilities without taking the drug test and without completing his visitation with the Juvenile scheduled for said day.

19. That the Respondent Father did obtain housing on August 26, 2011, and the home was assessed by the Sampson County Department of Social Services and he was asked to make certain corrections such as covering exposed wires and pipes, repairing a broken window, adding smoke alarms, removing a toilet in the yard, removing nails and other debris in the yard, amongst other things.

20. That the home of the Respondent Father also contained a large hole and debris and the Respondent Father failed to cover the hole or fence it off as requested.

. . . . .

22. That the Respondent Father never completed the requested repairs to his home.

23. That the Respondent Father has resided in at least seven (7) different locations since the child was born[.]

24. That the Respondent Father has failed to obtain and maintain stable and suitable housing.

. . . . .

28. That the Respondent Father has failed to provide verifications of his employment to the Sampson County Department of Social Services.

. . . . .

36. That the Juvenile was born cocaine positive and the Respondent Father was residing with the mother of the

Juvenile at the time of the Juvenile's birth.

- 37. That the Respondent Father was convicted of possession of cocaine.
- 38. That the Respondent Father has worked some as a seasonal farm laborer but does not have a stable job.
- 39. That the Respondent Father claims he is now "self-employed" remodeling mobile homes and tearing down mobile homes.
- 40. That the Respondent Father states he has remodeled four (4) mobile homes and torn down three (3) mobile homes.

. . . .

- 42. That the Respondent Father could not explain how the money was divided amongst his business partners.

. . . .

- 44. That the Respondent Father has outstanding criminal warrants for his arrest.

Although Respondent-Father has generally argued that one of the trial court's findings lacked adequate evidentiary support,<sup>2</sup> he has not made a specific challenge to any of the findings of fact

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<sup>2</sup>The specific finding that Respondent-Father has challenged as lacking in sufficient evidentiary support is Finding of Fact No. 45, in which the trial court determined that "the Respondent Parents have 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." As should be obvious, Finding of Fact No. 45 is, in reality, a conclusion of law and should be reviewed as such.

recited above, making them binding upon us for purposes of appellate review. *In re J.H.K.*, \_\_ N.C. App. \_\_, \_\_, 715 S.E.2d 563, 568 (2011). In addition, a careful review of the record shows that the factual findings recited above have ample support in the court reports that were admitted into evidence and in the testimony of Tina Williams, a social worker responsible for the provision of services to Melinda, and Respondent-Father. As a result, the findings of fact quoted above are binding upon us for purposes of appellate review.

The principal basis upon which Respondent-Father has challenged the trial court's determination that his parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) is his contention that the trial court erroneously applied an objective, rather than a subjective, legal standard in deciding whether Respondent-Father willfully left Melinda in foster care without making adequate progress toward rectifying the conditions which led to her removal from the home. In essence, Respondent-Father contends that the trial court failed to consider his capabilities, including the extent to which he made an effort to improve, and instead "emphasiz[ed] results over effort." In support of this assertion, Respondent-Father points to the trial court's comment that:

While if effort was enough, I think it would be a close call to determine whether



he has tried hard enough. Maybe he has. Maybe he has done as good as anyone could. But this is more of an objective standard where trying is great, but children need results. It has to be an objective accomplishment in order for the child to be safe and to be supported and here despite the efforts, despite the things he has done, there has not been a reasonable amount of success and achievement and progress in that sense to remedy the things that threaten[] stability for the child.

In addition to these comments, however, the trial court also stated at the conclusion of the termination hearing that "there has not been reasonable progress made as contemplated by the statute and there would be that ground and the Court finds therefore that there [are] one or more statutory grounds proven by clear, cogent and convincing evidence at this hearing." Moreover, the written judgment shows that the trial court applied the proper legal standard when it made its "findings of fact based upon clear, cogent, and convincing evidence" and concluded as a matter of law that:

. . . Respondent [Father 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.

Finally, nothing in the present record suggests that Respondent-Father lacked the ability to comply with the criteria which the

trial court, in accordance with the service agreement, determined that Respondent-Father should be required to satisfy. Thus, we conclude that the trial court's order reflects a proper understanding of the applicable law; that the trial court had ample basis for concluding that Respondent-Father's failure to maintain stable housing and employment constituted a willful failure to make reasonable progress toward correcting the conditions that led to Melinda's removal from the home; and that the unchallenged findings of fact support the trial court's conclusion that Respondent Father's parental rights in Melinda were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). As a result, the trial court's judgment should be, and hereby is, affirmed.

AFFIRMED.

Chief Judge MARTIN and Judge BEASLEY concur.

Report per Rule 30(e).