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NO. COA13-491

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

IN THE MATTER OF:

J.D.M.

Rowan County  
Nos. 08 JA 82, 08 JT 82

Appeal by respondent-mother from order entered 17 January 2013 by Judge Marshall Bickett in Rowan County District Court. Heard in the Court of Appeals 17 September 2013.

*Staff Attorney Robert A. Lester for petitioner-appellee Rowan County Department of Social Services.*

*Wyrick Robbins Yates & Ponton, LLP, by Tobias S. Hampson, for respondent-appellant mother.*

*Tawanda N. Foster for guardian ad litem.*

BRYANT, Judge.

Where the trial court's findings of fact are supported by the evidence, and support its conclusion that grounds existed to terminate parental rights, we will not disturb the trial court's ruling on appeal.

Respondent gave birth to Jordan<sup>1</sup> in 2002. In 2007, the Rowan County Department of Social Services ("DSS") began working with respondent after she was arrested for leaving Jordan home alone. On 5 May 2008, respondent was evicted from her apartment, and she and Jordan became homeless. Respondent failed three breathalyzer tests on 6, 13, and 16 May 2008, while staying at a shelter. On 19 May 2008, DSS removed Jordan from respondent's custody and filed a petition alleging he was neglected and dependent.

On 3 July 2008, the trial court adjudicated Jordan neglected and dependent, based on respondent's stipulation to the allegations in the petition. The trial court ordered respondent to obtain and maintain safe and stable housing; to obtain employment; to enter an inpatient substance abuse treatment facility, participate in the program, and follow all recommendations; to obtain a mental health assessment and follow all recommendations; and to release treatment records to DSS.

On 13 April 2009, the trial court entered a permanency planning order. The trial court found respondent had failed to comply with substance abuse treatment recommendations, ordered DSS to cease reunification efforts, and changed the permanent

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<sup>1</sup> Jordan is a pseudonym used to protect the identity of the juvenile pursuant to N.C.R. App. P. 3.1(b).

plan from reunification to custody or guardianship with a court-approved caretaker or relative. In November of 2009, the trial court ceased visitation between respondent and Jordan, unless authorized by Jordan's therapist.

In May of 2010, Jordan was placed in a kinship placement with his paternal aunt and uncle in Virginia. After reports that Jordan was "acting out" sexually, he was removed from the placement. Jordan reported that he had been physically abused in the kinship placement. Respondent continued to have difficulty maintaining employment and stable housing or staying in contact with DSS.

On 1 June 2012, the trial court entered an order changing the permanent plan to adoption. DSS filed a petition to terminate respondent's parental rights on 15 June 2012. As to respondent, DSS alleged grounds to terminate her parental rights based on neglect, failure to make reasonable progress, and failure to pay a reasonable portion of the cost of Jordan's care. N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2011).

The matter came on for a termination of parental rights hearing on 13 December 2012. Social worker Tina Kaufman testified at both adjudication and disposition. In an order entered 18 January 2013, the trial court found the existence of

all three grounds alleged by DSS to terminate respondent's parental rights, and that it was in Jordan's best interest to terminate respondent's parental rights.

Respondent now appeals.<sup>2</sup>

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On appeal, respondent challenges (I) the trial court's adjudication-phase findings of fact regarding her progress and its conclusion that grounds existed to terminate her parental rights. Respondent further contends that (II) the trial court abused its discretion in terminating her parental rights. Respondent's arguments lack merit.

*I.*

Respondent first argues that the trial court's adjudication-phase findings of fact regarding her progress in correcting the issues which led to the removal of her child, and its conclusion that grounds existed to terminate her parental rights, were not sufficiently supported by evidence at trial. We disagree.

At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground

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<sup>2</sup> The order also terminated the parental rights of the juvenile's father, but he is not a party to this appeal.

for termination exists. N.C. Gen. Stat. § 7B-1109(f) (2011); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Review in the appellate courts is limited to determining whether clear, cogent and convincing evidence exists to support the findings of fact, 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).

“When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate.” *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996) (citation omitted). “[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them.” *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (citation omitted). “[W]here no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal[.]” *In re S.D.J.*, 192 N.C. App. 478, 486, 665 S.E.2d 818, 824 (2008) (citation omitted).

Although the trial court concluded three grounds existed to terminate respondent’s parental rights, we find it dispositive that the evidence supports termination of her parental rights

pursuant to N.C.G.S. § 7B-1111(a)(2), based on respondent's failure to make reasonable progress toward correcting the conditions that led to Jordan's removal from her custody. See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426-27 (2003) (a finding of one statutory ground is sufficient to support the termination of parental rights).

In terminating parental rights pursuant to N.C.G.S. § 7B-1111(a)(2), the trial court must conduct a two-part analysis:

[t]he trial court must determine by clear, cogent and convincing evidence that a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and, further, that as of the time of the hearing, as demonstrated by clear, cogent and convincing evidence, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child. Evidence and findings which support a determination of "reasonable progress" may parallel or differ from that which supports the determination of "willfulness" in leaving the child in placement outside the home.

*In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005).

The respondent's failure to make reasonable progress must be willful, which is established when the respondent had the ability to show reasonable progress but was unwilling to make the effort. "A finding of willfulness does not require a

showing of fault by the parent.” *In re Fletcher*, 148 N.C. App. 228, 235, 558 S.E.2d 498, 502 (2002) (citation omitted). “A finding of willfulness is not precluded even if respondent has made some efforts to regain custody of the children.” *In re Shepard*, 162 N.C. App. 215, 224-25, 591 S.E.2d 1, 7 (2004) (citation omitted).

Respondent challenges all or part of adjudication-phase findings of fact 10-15, 18, 20, 22-24, 26, and 28, as well as ultimate findings 40, 41, and 44. Contrary to respondent’s arguments, however, Ms. Kaufman’s testimony supports the findings necessary to sustain the trial court’s conclusion that respondent failed to make reasonable progress.

First, Ms. Kaufman testified that Jordan had been adjudicated dependent and neglected in 2008, and that respondent had issues with substance abuse and housing stability at that time which continued through the time of the termination hearing. Respondent also refused to comply with recommendations for treatment. Throughout the history of the case, respondent had sporadic contact with DSS, and DSS had difficulty contacting her at the phone numbers and addresses she provided. Respondent moved from “place to place” and lived with various friends. Although respondent was employed at the time of the termination

hearing, she had sporadic periods of employment since 2008, which DSS had difficulty verifying. Respondent was convicted of alcohol-related charges in October of 2011 and January of 2012. When DSS attempted to verify respondent's claim that she had completed some substance abuse treatment, Ms. Kaufman discovered that respondent had not signed a release for her treatment information. We hold that Ms. Kaufman's testimony supports the trial court's essential findings of fact and, in turn, its conclusion that respondent failed to make reasonable progress.

*II.*

In respondent's second argument, she contends the trial court abused its discretion when it concluded it was in Jordan's best interest to terminate her parental rights. We disagree.

After finding grounds to terminate a parent's parental rights, the trial court must determine whether termination is in the best interests of the juvenile. N.C. Gen. Stat. § 7B-1110(a) (2011). "Thus, in this context, the child's best interests are paramount, not the rights of the parent." *In re T.K.*, 171 N.C. App. 35, 39, 613 S.E.2d 739, 741 (2005) (citation omitted). The trial court's decision at disposition is reviewed for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). In determining the best



interests of the juvenile, the trial court must consider the following criteria and make written findings addressing the 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.
- (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a). "[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them." *In re H.S.F.*, 182 N.C. App. at 742, 645 S.E.2d at 384 (citation omitted).

In this case, the trial court made findings addressing each of the statutory factors, and respondent does not challenge the evidentiary support for the trial court's findings. Rather, respondent argues that the overriding consideration is the likelihood of adoption and focuses her argument on the suitability of the proposed adoptive placement. The trial

court, however, made a finding addressing the likelihood of adoption and the proposed adoptive home, and weighed that factor against the other statutory factors, including the quality of respondent's bond with Jordan. Given the evidence presented, respondent has not established that the trial court abused its discretion in concluding it was in Jordan's best interest to terminate respondent's parental rights.

Affirmed.

Judges McGEE and STROUD concur.

Report per Rule 30(e).