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NO. COA13-583  
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

IN THE MATTER OF:

B.G.A.S., J.J.J.Z.Z.W.,	Wilson County
K.J.G.W., & J.M.E.	Nos. 11 J 02-04
	11 J 47

Appeal by respondent-mother from orders entered 30 January 2013 by Judge William G. Stewart in Wilson County District Court. Heard in the Court of Appeals 15 October 2013.

*Jennifer K. Bennington for Wilson County Department of Social Services, petitioner-appellee.*

*Administrative Office of the Courts, by Appellate Counsel Tawanda N. Foster, for guardian ad litem.*

*Mercedes O. Chut for respondent-appellant.*

HUNTER, Robert C., Judge.

The juveniles who are the subjects of this juvenile proceeding are B.G.A.S. ("Beth") born in 2006, J.J.J.Z.Z.W. ("Jake") born in 2005, K.J.G.W. ("Kim") born in 2010, and J.M.E.

("Jim") born in 2011.<sup>1</sup> Respondent-mother appeals from an order terminating her parental rights to Beth, Jake and Jim and from an order establishing a permanent plan of guardianship with a relative for Kim. We affirm.

#### I. Procedural History

Beth, Jake and Kim were adjudicated as neglected and dependent juveniles at the 9 February 2011 session of juvenile court, and Wilson County Department of Social Services ("DSS") was awarded custody of the children. Respondent-mother subsequently gave birth to Jim on 2 April 2011. Jim was adjudicated neglected and dependent and was placed in the custody of DSS by order filed 6 September 2011.

On 21 February 2012, DSS filed petitions/motions in the cause to terminate the parental rights of respondent-mother to Beth and Jake and on 7 November 2012 to Jim on grounds she: (1) abused or neglected the juveniles; (2) left the juveniles in foster care or placement outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances had been made in correcting the conditions which led to the removal of the juveniles; (3) willfully failed to pay a reasonable portion of

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<sup>1</sup> Pseudonyms stipulated in the record on appeal.

the cost of care of the juveniles for a continuous period of six months next preceding the filing of the petition; (4) is incapable of providing for the proper care and supervision of the juveniles such that the juveniles are dependent; and (5) willfully abandoned the juveniles for at least six consecutive months next preceding the filing of the petition. As an additional ground for termination of respondent-mother's rights to Jim, the petition alleged the parental rights of respondent-mother to other children have been terminated involuntarily by a court of competent jurisdiction and she lacks the ability or willingness to establish a safe home for the juvenile. After a hearing on 20 December 2012, the court filed orders terminating respondent-mother's parental rights to Beth, Jake and Jim on all of the above grounds except (4) and (5). The court entered an order changing the permanent plan for Kim to guardianship and awarding legal custody of her to a relative.

## II. Standard of Review

To terminate parental rights, a showing must be made by clear, cogent, and convincing evidence that grounds authorizing termination of parental rights exist. *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). We review a court's order to determine whether the findings of fact are supported by

clear, cogent, and convincing evidence and whether the conclusions of law are supported by the findings of fact. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6, *disc. review denied sub nom In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). We conduct *de novo* review of the court's conclusions of law. *In re S.N., X.Z.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

### III. Review of Findings of Fact

Respondent-mother argues a number of the court's findings of fact are not supported by clear, cogent, and convincing evidence. She challenges findings that she: (1) has an untreated personality disorder which is unlikely to change; (2) has not completed components of her case plan; (3) has an extended history of involvement with departments of social services, including as a juvenile herself; (4) did not have adequate housing when DSS received a complaint in November of 2010; and (5) failed to cooperate with an agency tasked to help her find employment.

Findings of fact are conclusive "where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984). Even though

unsupported by evidence, a finding may not result in reversible error if the remaining findings support the court's ultimate adjudication. *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). Evidence the court may consider in making findings of fact includes testimony and all written reports and materials received into evidence. *In re Ivey*, 156 N.C. App. 398, 402, 576 S.E.2d 386, 390 (2003).

After carefully reviewing the evidence, including the testimony of the social worker in charge of the case, the testimony of the psychologist who conducted an evaluation of respondent-mother, the reports of the social worker and psychologist, and prior court orders in this proceeding, we find ample support as summarized below for the court's findings of fact.

Delois Debro, the foster care and adoption social worker for DSS, testified that she has been the primary worker on this case and that respondent-mother has not complied with case plans and the court's orders in this proceeding. Although respondent-mother completed a mental health evaluation ordered by the court, she never completed individual and family counseling or therapy. Respondent-mother has not allowed the social worker to view the home in which she currently resides, has not maintained

employment, and has not provided any documentation of recent employment. Visits with respondent-mother were terminated because the children were having "adverse behaviors," including incontinence, spitting, and writing on walls, before and after visits with respondent-mother. It would take the foster parents several days after visits to control these behaviors. When the youngest child was born, respondent-mother provided false information about the child's name and birthplace. She refused to allow DSS to see the child.

During the course of the proceeding, respondent-mother indicated to DSS that she was employed but failed to provide documentation. Respondent-mother never produced any documentation she was unable to work, and she was provided resources to help her find a job, including a referral to Working with Kids, a program to help parents find jobs so they could pay support. To the social worker's knowledge, respondent-mother has not followed through with that referral or provided the children with safe and appropriate housing. Respondent-mother was provided transportation to seek work and counseling, referrals to therapists, and referrals to apply for Medicaid. Respondent-mother has not paid any money to support the children since 15 November 2011.

Respondent-mother has given birth to nine children, all of whom are no longer in her custody. Four have been adopted and one is in the custody of the child's father. The parental rights of respondent-mother were terminated to all but one, and in that case, the child was voluntarily relinquished for adoption.

Sharta Sylivant, a psychologist, testified that she conducted a psychological evaluation of respondent-mother in May 2011, and diagnosed her as having an Axis II personality disorder "with anti-social, narcissistic, and histrionic traits[.]" She testified that personality disorders like these are "enduring, and they're hard to ameliorate." Sylivant also testified that she thought respondent-mother had personality traits which could negatively impact her parental functioning, and that she never took accountability for the problems in her life and claimed she was being held accountable for her mother's parenting mistakes.

#### IV. Grounds for Termination of Parental Rights

By her next series of arguments, respondent-mother challenges the court's conclusions as to the existence of multiple grounds to terminate parental rights. Respondent-mother first challenges termination of her parental rights to

the juveniles pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2011). To terminate parental rights pursuant to this statute, it must be shown by clear, cogent, and convincing evidence that the parent (1) willfully left the child in placement outside the home for more than twelve months, and (2) as of the time of the termination hearing, failed to make reasonable progress under the circumstances to correct the conditions that led to the child's removal. *In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396, *disc. review denied*, 360 N.C. 64, 623 S.E.2d 587 (2005). The trial court's order must contain adequate findings of fact as to whether (1) the parent acted willfully and (2) the parent made reasonable progress under the circumstances. *In re C.C.*, 173 N.C. App. 375, 384, 618 S.E.2d 813, 819 (2005).

Respondent-mother contends the court's findings of fact are inadequate because they fail to address whether she failed to make reasonable progress during a twelve-month period. She argues the findings failed to consider her circumstances or whether her failure to make progress was willful.

"Voluntarily leaving a child in foster care for more than twelve months or a failure to be responsive to the efforts of DSS are sufficient grounds to find willfulness." *In re*



*A.R.H.B.*, 186 N.C. App. 211, 221, 651 S.E.2d 247, 255 (2007) (citation omitted), *appeal dismissed*, 362 N.C. 235, 659 S.E.2d 433 (2008). "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, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). "Evidence showing a parent's ability, or capacity to acquire the ability, to overcome factors which resulted in their children being placed in foster care must be apparent for willfulness to attach." *In re Matherly*, 149 N.C. App. 452, 455, 562 S.E.2d 15, 18 (2002). A conclusion that a parent willfully left a child in foster care is not precluded simply because the parent made some efforts to regain custody of the child. *In re Oghenekevebe*, 123 N.C. App. 434, 440, 473 S.E.2d 393, 398 (1996).

We hold the court's findings support its conclusion. The court's findings show that respondent-mother has left the children in foster care since their removal from her custody in February 2011 and has not been responsive to efforts to reunify her with the children or compliant with orders of the court. For example, the findings of fact indicate respondent-mother has not completed tasks ordered by the court to be done over the

course of several months. Respondent-mother has done little, if anything, to address her mental health issues which prevent her from effective parenting. Although she completed parenting classes, she has not demonstrated adequate parenting skills. She has not presented DSS with proof of employment or of disability to work. She failed to cooperate with efforts of DSS to help her find employment so she could have money to provide for her children's needs. She refused to allow DSS access to her current home. She sought to conceal the birth of her last child, Jim, after Beth and Jake had been removed from her custody. She provided false information to DSS concerning Jim's date and place of birth. She falsely told hospital staff at the time Jim was born that her other children were staying with her. Visits with the children had to be terminated because of things respondent-mother said to the children and the negative effect of the visits upon the children's behavior.

Therefore, we hold that the court's findings support its conclusion that there was a sufficient ground to terminate respondent-mother's parental rights pursuant to section 7B-1111(a)(2). Because a finding of only one ground will support termination of parental rights, discussion of respondent-mother's arguments concerning the other grounds for termination

of her rights is unnecessary. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff=d per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006).

#### V. Award of Custody to Relative

Respondent-mother's remaining contention is that the court erred by awarding permanent custody of Kim to a relative. She submits that the court used essentially the same findings made in the termination of parental rights orders to support its disposition as to Kim. She argues the findings in Kim's order are not supported by evidence for the same reasons argued with regard to the orders terminating her parental rights. She also argues the order lacks a finding required by N.C. Gen. Stat. § 7B-907(f) in order to place custody of a child with an individual other than the parents.

As we have found evidence to support the findings in the termination of parental rights orders, which are substantially the same as those in the order awarding custody of Kim to a relative, we find evidentiary support for the court's findings in that order. As for the argument concerning the court's failure to make an allegedly mandatory finding, N.C. Gen. Stat. § 7B-907(f) provides that if a court elects to place a child in the custody of an individual other than the parent or guardian,

"the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile." N.C. Gen. Stat. § 7B-907(f) (2011). This statute does not "require that the court make any specific findings in order to make the verification." *In re J.E.*, 182 N.C. App. 612, 616-17, 643 S.E.2d 70, 73, *disc. review denied*, 361 N.C. 427, 648 S.E.2d 504 (2007).

The court made findings of fact that Kim has been residing with this relative since 8 March 2012, that Kim seems to have bonded with this relative and other members of the household, that this relative placement is safe and stable, that Kim is developing well in this placement, that this relative is willing to work with DSS toward completion of the court-ordered plan, and that this relative is interested in providing a permanent home for Kim. We conclude these findings demonstrate that the court did satisfy the verification requirement of section 7B-907(f).

## VI. Conclusion

The orders terminating respondent-mother's parental rights to Beth, Jake and Jim and awarding guardianship of Kim to the relative are affirmed.

AFFIRMED.

Judges CALABRIA and HUNTER, JR. concur.

Report per Rule 30(e).