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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-466

Filed: 17 November 2015

Guilford County, No. 12 JT 577

IN THE MATTER OF: S.A.G.

Appeal by respondent from orders entered 26 September 2013 by Judge H. Thomas Jarrell, Jr. and 17 December 2014 by Judge Susan Burch Brooks in Guilford County District Court. Heard in the Court of Appeals 5 October 2015.

Guilford County Department of Health and Human Services, by Mercedes O. Chut, for petitioner-appellee.

Matthew D. Wunsche for Guardian ad Litem.

Mark Hayes for respondent-appellant mother.

DIETZ, Judge.

Respondent appeals from the trial court's order terminating her parental rights to her minor child, S.A.G. The Guildford County Department of Health and Human Services obtained custody of S.A.G. after reports that Respondent and the child's father were in a dangerous and abusive relationship. After Respondent lost custody of her child, she refused to provide any financial support, despite evidence showing she earned \$10,000 or more per month as a prostitute. Respondent testified that she spent the money "shopping and just, like, food, paying for hotels, and just doing dumb stuff with it." She did not provide money to support her child because

“that money is not going to my daughter, it’s going to the State” and “I don’t feel like I need to pay anyone for having my child.”

As explained below, this evidence supports the trial court’s finding that Respondent willfully refused to pay a reasonable portion of the cost of care for the juvenile although able to do so. N.C. Gen. Stat. § 7B-1111(a)(3). Accordingly, we affirm the trial court’s order terminating Respondent’s parental rights on this statutory ground.

Facts and Procedural History

On 31 October 2012, the Guildford County Department of Health and Human Services (DHHS) received a report of neglect regarding S.A.G. The report alleged instances of domestic violence in the home leading to an injurious environment. Respondent initially denied the allegations because, she explained, she did not want to prevent the child’s father from visiting the child. But Respondent later admitted that the father physically abused her. Respondent admitted that in 2011 she went to the hospital for broken ribs caused by the father and that in 2012, shortly before the neglect report was filed, the father gave Respondent a black eye during an altercation in which he held the child’s belongings “hostage.” At the time of the October 2012 report, the father was on probation for assault on a female against an ex-girlfriend.

DHHS petitioned for custody of the child, alleging S.A.G. was neglected and dependent. On 11 February 2013, the trial court adjudicated S.A.G. dependent, but

dismissed the allegations of neglect in accordance with an agreement with Respondent.

On 26 September 2013, the trial court entered an order changing the permanent plan to adoption. The court justified its order by finding that Respondent continued to acquire new criminal charges and was incarcerated at the time of the hearing. In addition, the court found that Respondent had missed multiple scheduled visitations with S.A.G., continued to work as a prostitute and did not have stable housing.

On 29 October 2013, DHHS filed a motion to terminate Respondent's parental rights based on neglect and willful failure to pay a reasonable portion of the cost of care for the juvenile. The trial court held a hearing on the motion and entered an order on 17 December 2014 terminating Respondent's parental rights based on neglect and failure to pay reasonable cost of care. Respondent timely appealed.

Analysis

Respondent argues that the trial court erred in terminating her parental rights. For the reasons discussed below, we affirm the trial court.

On appeal from an order terminating parental rights, "this Court reviews whether the district court's findings of fact are supported by clear, cogent and convincing evidence, and whether those findings support the district court's conclusions of law." *In re T.C.B.*, 166 N.C. App. 482, 485, 602 S.E.2d 17, 19 (2004).

“If the decision is supported by such evidence, the district court’s findings are binding on appeal, even if there is evidence to the contrary.” *Id.*

When a child is in the custody of DHHS, a court may terminate parental rights if “the parent, for a continuous period of six months preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.” N.C. Gen. Stat. § 7B-1111(a)(3) (2013). “A parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent’s ability or means to pay.” *In re Faircloth*, 161 N.C. App. 523, 525, 588 S.E.2d 561, 563 (2003). “Nonpayment . . . constitutes a failure to pay a ‘reasonable portion’ if and only if respondent were able to pay some amount greater than zero.” *Id.* at 526, 588 S.E.2d at 564 (brackets omitted).

Here, Respondent concedes that she paid nothing in child support while S.A.G. was in DHHS custody. Respondent contends that she did not *willfully* fail to pay support because her nonpayment was based on her belief that the payments would go to the State and would not benefit her child. Respondent now admits that her reasoning was a mistake but contends that her young age and lack of knowledge with regard to parental rights laws must be taken into account in assessing the validity of her belief.

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“The word ‘willful’ means something more than an intention to do a thing. It implies doing the act *purposely* and *deliberately*.” *In re S.T.B., Jr.*, ___ N.C. App. ___, ___, 761 S.E.2d 734, 737 (2014). Here, Respondent testified, “I never wanted to pay child support. Even [sic] I could have paid child support, but I didn’t want to, because that money is not going to my daughter, it’s going to the State . . . I don’t feel like I need to pay anyone for having my child[.]” This testimony demonstrates that Respondent “purposely and deliberately” chose not to pay. *Id.* Thus, the record supports the trial court’s finding that Respondent’s failure to pay was willful.

Respondent next contends that the trial court erred because the order does not find that Respondent made enough money to pay support. We disagree. In Finding of Fact 62, the trial court found that Respondent made a “significant” amount of money as a prostitute:

[Respondent] made a significant amount of money engaging in prostitution during the six month period, although she gave conflicting testimony as to the amount of those earnings. [Respondent] was able to pay some amount more than \$0.00 toward the juvenile’s cost of care during the six month period. [Respondent] did not fail to contribute to the juvenile’s cost of care because she could not afford to do so.

Thus, the order included a finding that Respondent made sufficient money to pay support. This finding is supported by the record. At the hearing, Respondent testified that she earned more than \$10,000 a month engaging in prostitution but

that she spent the money on “shopping and just, like, food, paying for hotels, and just doing dumb stuff with it.”

Based on this testimony, the court properly found that Respondent had the ability to pay some amount more than zero and that “no evidence was presented indicating any legally justifiable cause or condition that prevented [Respondent] from contributing some amount to the juvenile’s cost of care during the six month period.” Accordingly, we reject Respondent’s argument.

Respondent next argues that the trial court erred in concluding she did not provide any support to the child. Specifically, Respondent testified at the hearing that she bought things for S.A.G. and now argues on appeal that the court improperly ignored this testimony. Again, we disagree.

The only evidence on this issue was Respondent’s self-serving testimony that she “bought things” for her child. Respondent did not identify what she bought, how those things contributed to supporting her child, or their value. Thus, the trial court did not err in declining to accept this testimony as evidence that Respondent provided support for her child.

Finally, Respondent contends that, because she was in jail for one month during the relevant six month period, the court could not find “that any failure to pay was continuous, and that any failure to pay was for a full six months.” Our case law precludes this argument. Where a parent “had an opportunity to provide for some

portion of the cost of care of the child, and forfeits that opportunity by his or her own misconduct, such parent will not be heard to assert that he or she has no ability or means to contribute to the child's care and is therefore excused from contributing any amount." *Matter of Bradley*, 57 N.C. App. 475, 479, 291 S.E.2d 800, 802-03 (1982).

Here, the trial court found that Respondent had the ability to pay some amount more than zero toward the child's cost of care from February 2013 through December 2013. Respondent spent one month in jail during that time due to a misdemeanor larceny conviction. Respondent had the opportunity to earn money during the applicable six month period and was in fact doing so before her incarceration. Under *Bradley*, because Respondent had the ability to pay, Respondent cannot claim she was excused from providing support simply because she was incarcerated. *See id.*

In sum, we reject Respondent's arguments and hold that the trial court properly terminated her parental rights because Respondent willfully failed to pay a reasonable portion of the cost of care for the juvenile although able to do so. Because we hold termination on this ground was appropriate, we need not address Respondent's remaining arguments. *See In re N.T.U.*, ___ N.C. App. ___, ___, 760 S.E.2d 49, 57 (2014).

Conclusion

We affirm the trial court's order terminating Respondent's parental rights.

AFFIRMED.

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Judges ELMORE and DILLON concur.

Report per Rule 30(e).