IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-599

Filed: 15 December 2015

Lincoln County, Nos. 12 JT 56-57

IN THE MATTER OF: J.R. & A.R.

Appeal by Respondent-mother from order entered 10 March 2015 by Judge K. Dean Black in Lincoln County District Court. Heard in the Court of Appeals 23 November 2015.

Lauren Vaughan for petitioner-appellee Lincoln County Department of Social Services.

Blackburn & Tanner, by James E. Tanner III, for respondent-appellant mother.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Jackson W. Moore, Jr. and Kayla J. Marshall, for guardian ad litem.

INMAN, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights to J.R. ("Joe") and A.R. ("Al").[1] After careful review, we affirm.

Factual and Procedural Background

On 12 October 2012, the Lincoln County Department of Social Services ("DSS") took the children into nonsecure custody and filed a juvenile petition alleging that

[1] Pseudonyms are used to protect the identity of the juveniles and for ease of reading.

the children were neglected and dependent. According to the petition, the family had been involved with DSS agencies in Lincoln, Gaston, and Mecklenburg Counties since January 2011 due to substance abuse by Respondent-mother, unstable housing, domestic violence between Respondent-mother and the children's father, and the parents' criminal records. The petition further alleged that, when Joe was born in July 2012, he tested positive for benzodiazepines, and Respondent-mother tested positive for a very high dose of Xanax. Respondent-mother's purse contained 13 empty pill bottles and a 120-count bottle of Xanax with only 66 pills remaining, despite the prescription being filed only one day earlier. Lastly, the petition alleged that Respondent-mother visited numerous hospitals seeking to obtain pain medication.

In an order entered on or about 1 July 2013, the trial court adjudicated Joe and Al neglected, based on the consent of the parties. In the dispositional portion of the order, the trial court kept Joe and Al in DSS custody and ordered Respondent-mother to comply with various directives.

On 17 April 2014, DSS filed a petition to terminate Respondent-mother's parental rights to Joe and Al, alleging the following grounds for termination: (1) neglect; (2) failure to make reasonable progress towards correcting the conditions that led to removal; and (3) willful failure to pay a reasonable portion of the cost of care for the juveniles. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3) (2013). In the petition,

DSS also sought to terminate the father's parental rights; however, DSS voluntarily dismissed the petition as to the father on 21 October 2014 after he relinquished his parental rights to the children.

Following a hearing, the trial court entered an order on 10 March 2015 terminating Respondent-mother's parental rights based upon all three grounds alleged by DSS. Respondent-mother appeals.

Analysis

Respondent-mother challenges the trial court's grounds for termination of her parental rights. Pursuant to N.C. Gen. Stat. § 7B-1111(a), a trial court may terminate parental rights upon a finding of one of eleven enumerated grounds. If this Court determines that the findings of fact support one ground for termination, we need not review the other challenged grounds. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003). We review the trial court's order to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur[.]" *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395 (1996).

The trial court's findings of fact are sufficient to support termination of Respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). This subsection provides that the trial court may terminate parental rights if it finds

that the parent willfully left the juvenile in foster care for over twelve months, and that the parent has not made reasonable progress to correct the conditions which led to the removal of the juvenile. *In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396.

The trial court made numerous findings of fact pertinent to this ground for termination. Of these findings, Respondent-mother specifically challenges portions of numbers 44 and 47 as lacking in evidentiary support. Specifically, Respondent-mother argues that the trial court erroneously found that she had several positive drug screens while in treatment. However, even without this finding, the trial court's findings of fact were more than adequate to establish that Respondent-mother willfully left her children in foster care for over twelve months and that the she failed to make reasonable progress to correct the conditions which led to the removal. We therefore disregard the portions of findings of fact numbers 44 and 47 which Respondent-mother challenges. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When [ ] ample other findings of fact support an adjudication of neglect, erroneous findings unnecessary to the determination do not constitute reversible error."). Respondent-mother does not challenge any of the other findings of fact. We therefore presume that the remaining findings of fact are supported by competent evidence, and consequently, they are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009).

Respondent-mother, however, argues that the findings of fact do not support the conclusion that she willfully failed to make reasonable progress in correcting the conditions that led to removal of her children. Respondent-mother argues that she took parenting classes in prison, attended substance abuse counseling, had no more episodes of domestic violence, and had clean drug screens. She contends that this constitutes reasonable progress under the circumstances. She also argues that she did not make progress on housing and employment because she was incarcerated. Respondent-mother claims because she was incarcerated for breaking and entering, it was "due to poverty" and therefore does not represent an unwillingness to improve her circumstances or negate her reasonable progress. We are not persuaded by Respondent-mother's arguments.

It is well-established that a finding of willfulness, as that term is used in N.C. Gen. Stat. § 7B-1111(a)(2), does not require a showing of fault by the parent. *Oghenekevebe*, 123 N.C. App. at 439, 473 S.E.2d at 398. "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. "A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995).

Here, the unchallenged findings establish that Respondent-mother had clear objectives which needed to be met in order to achieve reunification. Respondent-mother's original DSS case plan required her to attend parenting classes; obtain substance abuse, mental health, and domestic violence treatment; and obtain stable housing. The trial court imposed additional requirements after the juvenile adjudication and disposition: she was required to complete a substance abuse assessment and follow through with recommendations, obtain and maintain stable housing, obtain and maintain employment, and submit to random drug tests.

The unchallenged findings of fact also show that Respondent-mother did not complete domestic violence classes, had been in and out of jail since the original juvenile petitions were filed, failed to obtain appropriate housing, and was not gainfully employed during the pendency of the case. Respondent-mother also failed to address her substance abuse problems. She started several substance abuse programs during the relevant time period but failed to complete any of them. She refused four DSS drug screens and continued to seek narcotics from local hospitals well into 2014.

Thus, the findings of fact establish that Respondent-mother did not make reasonable progress to correct the conditions which led to removal of her children. Even though she made some progress, it was limited. "Extremely limited progress is not reasonable progress." *Id.* at 700, 453 S.E.2d at 224-25. Despite the fact that

Respondent-mother did not engage in any further domestic violence with the father, she nonetheless failed to complete required domestic violence treatment. While we do not hold Respondent-mother's incarceration against her, we are not persuaded that her criminal charges can be excused simply by asserting that they were due to poverty. Most importantly, Respondent-mother utterly failed at addressing her substance abuse problems. Based on the foregoing, we hold that the trial court was correct in concluding that termination of Respondent-mother's parental rights was justified pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

AFFIRMED.

Judges MCCULLOUGH and ZACHARY concur.

Report per Rule 30(e).