IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-157

Filed: 20 September 2016

Jackson County, Nos. 13 JA 25–27, 14 JA 44

IN THE MATTER OF: I.C., J.C., J.C., and R.C.

Appeal by respondent from order entered 5 June 2015 by Judge Roy T. Wijewickrama in Jackson County District Court. Heard in the Court of Appeals 24 August 2016.

Earwood, Moore, Carpenter & Guy, PLLC, by David D. Moore, for petitioner-appellee Jackson County Department of Social Services.

Mercedes O. Chut for respondent-appellant mother.

Troutman Sanders LLP, by Gavin B. Parsons, for guardian ad litem.

BRYANT, Judge.

Where the trial court's written findings of fact are supported by ultimate facts and demonstrate that the efforts to reunify the parents with the children would be inconsistent with the juveniles' health, safety, and need for a safe, permanent home within a reasonable time, we affirm. Additionally, where counsel's performance was not deficient and did not fall below an objective standard of reasonableness, we affirm.

On 11 July 2013, the Jackson County Department of Social Services ("DSS") filed petitions alleging that I.C., J.C., and J.C. ("Ivy, Jacob, and Jason") [1], the children of respondent-mother, were neglected juveniles.[2] DSS had received a report on 16 May 2013 that the conditions of respondent's home were "horrible." Among the stated issues were that the power was turned off; there was dog feces throughout the home; there was an open electrical box within reach of the children; and respondent and the father were abusing drugs. There was also a claim that respondent routinely left Ivy in a car seat with a propped-up bottle, and Ivy had developed "an infection on her neck from staying wet which ha[d] gotten so bad it [was] bleeding and getting worse." The investigating social worker found an unkempt home with no food, dirty laundry, dirty dishes, and a hole in the floor the size of a soccer ball.

DSS requested that the juveniles be placed in a kinship placement due to the conditions of the home. Respondent stated that she would be moving to a new home by 19 May 2013. DSS observed a rash on Ivy's neck and expressed concerns regarding the shape of her head, as it "appeared to be misshapen." Respondent admitted that, because she did not have a crib for Ivy, Ivy would be placed in her car seat for extended periods of time.

[1] Pseudonyms are used to protect the identities of the juveniles. N.C. R. App. P. 3.1(b) (2015).
[2] The juveniles' father is not a party to the present appeal.

Respondent reported that she was in a new residence on 28 May 2013. On 29 May 2013, a social worker went to the home to ensure the juveniles' basic needs would be met. The social worker reported that there was only one bed for one of the boys, and none for Ivy. Additionally, there was no food in the home, respondent "smelled like alcohol and denied drinking," and "ants were crawling throughout the kitchen." The social worker returned the next day to find there was still no food in the home and only one bed. On 31 May 2013, respondent called DSS and stated she had food and beds. After a social worker confirmed respondent's claims, the juveniles returned to respondent's home. On 3 June 2013, respondent tested positive for methamphetamine use.

DSS conducted a "transition visit" to respondent's home on 14 June 2013. Social workers observed trash scattered on the outside of the home, including one trash bag that had a knife handle sticking out of it. They also observed broken Christmas ornaments that posed a safety hazard. The inside of respondent's home smelled like garbage, and trash was observed scattered throughout.

On 3 July 2013, DSS received a new report alleging that the children were being left unsupervised. The report also claimed that the children were "picking up cigarette butts and beer cans the parents leave laying [sic] around and drinking them"; that Ivy had a rash on her neck; the juveniles were dirty and not being taken care of; and the home was "a disaster with food piled everywhere, trash everywhere,

dirty clothes all over the floor and the baby [Ivy] was in the bassinet at the foot of the bed with clothes piled all over the bassinet." Additionally, it was reported that respondent had failed to pay her rent. Social workers went to the home to investigate and found the home to be dirty and unkempt. Social workers found trash lying both inside and outside of the home; the house smelled like trash; there were dirty diapers on the floor in every room; Ivy was on the floor within reach of small pieces of trash, a dirty knife, and coins; the home was infested by ants and other bugs; and dirty dishes were piled up in the sink and on countertops. Additionally, Jacob and Jason climbed on top of the social worker and bit him on the arm. Respondent did nothing to stop this behavior until twice asked to do so by the social worker.

Social workers made an unannounced visit on 10 July 2013. They discovered that respondent had been arrested for failure to appear, and that she had been served with an eviction notice. Social workers found the maternal grandmother at the home in a dazed condition, making incomplete sentences, repeating herself, and not supervising the children. Ivy was found eating her own vomit on the floor and sticking a ball point pen in her mouth. Jacob was playing with nails, climbing underneath cars in the driveway, and eating gravel and grass. The home still had the same trash, dirty diapers, and food on the floor. The children were unkempt and smelled bad. Accordingly, DSS filed petitions alleging neglect and obtained non-

secure custody of the juveniles. On 11 September 2013, a consent order was entered adjudicating Ivy, Jacob, and Jason as neglected.

R.C. ("Ruby")[3], was born in January 2014. On 30 May 2014, DSS received a report that Ruby had a rash that extended from her chin to her chest. On 1 July 2014, DSS found Ruby in need of services because she was not receiving treatment for the rash. On 24 July 2014, DSS received a report that respondent and the father hit each other during unsupervised visits with the juveniles and in the presence of the juveniles. DSS met with Jason to investigate the report, and Jason stated to the social worker that respondent and the father "fight all the time." He stated "they yell and cuss and hit each other." Jason's brother, Jacob, stated "we get spankings all the time on our butt and legs and everywhere else." DSS workers went to the home to investigate and noted the unkempt condition of the home, as well as another rash on Ruby's neck. DSS obtained non-secure custody of Ruby. On 8 August 2014, DSS moved to suspend visitation.

DSS filed new juvenile petitions on 6 October 2014 alleging that Jason and Jacob were abused and neglected, and Ivy and Ruby were neglected. DSS recounted Jason's statements regarding domestic violence in the home and the juveniles being spanked, as well as the reports concerning the unkempt condition of the home. Additionally, DSS alleged that it had received reports that the father had sexually

[3] *See supra* note 1.

abused both Jason and Jacob. DSS substantiated the claims of sexual abuse on 2 September 2014.

By order entered on 6 November 2014, the trial court suspended visitation. On 5 March 2015, the juveniles were adjudicated neglected by consent order. On 5 June 2015, the trial court ceased reunification efforts and changed the permanent plan to termination of parental rights and adoption. Respondent appeals.

On appeal, respondent argues that (I) the trial court erred in ceasing reunification efforts where neither the evidence, nor the findings support that decision; and (II) respondent was denied her right to effective assistance of counsel and deserves a new hearing.

I

Respondent first argues that the trial court erred by ceasing reunification efforts. We disagree.

"This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007) (citations omitted).

Here, the trial court found as fact the following:

> 9. That [respondent has] entered case plans and performed poorly.
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> . . .
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> 11. That [respondent is] incapable of parenting the juveniles and addressing the issues that led to the removal of the juveniles from [her] home.
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> 12. That [respondent] has continued with significant substance abuse addiction and has not been treated. As recently as February 14, 2015, the [respondent] was receiving Jose Cuervo Tequila on a Facebook posting as evidenced in DSS #1.
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> 13. [Respondent] has not completed in-patient treatment and has not participated in Narcotics Anonymous or Alcoholics Anonymous.
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> 14. That [respondent] does not participate in medication management.
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> 15. That the Court cannot find that she is taking medications as prescribed.
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> 16. That [respondent has] previously been referred to classes with Glenn Cassle at Barium Springs in order to achieve the plan of reunification, including Love and Logic, but [she has] been unsuccessful in completing the same.
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> 17. That [respondent has] made little to no effort to complete the Barium Springs classes.
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> 18. That [respondent], as recently as November 2014, was testing positive for illegal controlled substances.
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> 19. That the circumstances leading to the removal of the juveniles from the home have not been remedied.

> . . .
>
> 27. That [Jason] has a mental health diagnosis of disruptive disorder and is doing much better [with his placement family].
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> 28. That prior to August, 2014, [respondent was] permitted visits with [Jason] and that since the visits were terminated, Dr. [Lori] Klinger's concerns [with Jason's disruptive disorder] have been alleviated.
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> . . .
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> 36. That [respondent has] made no effort whatsoever to successfully complete [her] case plan[ ] and [is] not capable of successfully completing [her] case plan[ ].

[R. pp. 224–25].

Respondent does not challenge the bulk of the trial court's findings of fact, and thus we are bound by them. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (holding unchallenged findings are deemed supported by competent evidence and are binding on appeal). Moreover, we review only those findings necessary to support the trial court's determination that reunification efforts should cease. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240–41 (2006) (noting erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

Respondent argues that Finding of Fact No. 9, that she performed poorly on her case plan, is not supported by the evidence. Respondent also challenges Findings

of Fact Nos. 16 and 17 as being unsupported by the evidence. We disagree. The DSS court summary, prepared in March 2015 and marked as Exhibit 1 at the hearing, states as follows:

> Dr. Cummings reports that [respondent's] skills and understanding have improved little since the original [capacity to parent] evaluation in 2013. She reports further that [respondent] does not appear to have improved her management skills of the children and has a "persistent failure to accept the feedback that her parenting has been found wanting, is troubling, and bodes very poorly for the future." She reports further that if the Department were to continue to pursue reunification that it is imperative that [respondent] acquire and consistently display a better understanding of the children's needs. That she remain[ ] drug free, improve her problem-solving skills, and increase her ability to act assertively. She finally says that it seems unlikely that [respondent] can make these significant improvements.

Respondent also participated in an updated mental health and substance abuse assessment, which recommended that she complete medical detoxification, as well as inpatient treatment and services. DSS reported, however, that

> [Respondent] reports being clean since shortly after this evaluation. She reports since moving in with her new significant other . . . she has not drank alcohol or used illegal substances. A facebook picture she posted on February 14, 2015 as having received a bottle of Jose Cuervo Tequila for [a] Valentine's Day gift suggests she does still imbibe. [Respondent] did not participate in medical detoxification. She did not complete inpatient treatment[.] She has not attended any other substance abuse prevention such as NA or AA. She has not followed through in engaging in classes with Meridian. [Respondent] is not participating in medication

> management. [Respondent] last participated in taking her recommended medications sometime shortly after [Ruby] came into care.

DSS further reported:

> [Respondent] made sporadic efforts, at best, to complete services with Glen Cassle of Barium Springs. Mr. Cassle attempted, diligently, to work with [respondent] on [her] schedule including late evenings and weekends. Near April 2014 Glen reported his supervisor was near recommending services close . . . due to lack of participating. . . . [I]n a service that typically takes 3 months to complete, [respondent] had the service open from January 2014 to June of 2014, [and she] failed to participate significantly enough to complete it. . . . [Respondent's] lackadaisical attitude towards these pertinent services cost them the ability to finish the services with Mr. Cassle in a timely manner.
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> [Respondent has not] made efforts in completing these classes at Meridian since Glen Cassle closed services in [l]ate June 2014 despite several prompts by the Department.

DSS also claimed that respondent had failed to cooperate with DSS in regards to her case plan or maintain regular contact. DSS stated that respondent had failed to cooperate in her case plan since July 2014. Additionally, the juveniles' guardian ad litem testified that respondent had made "very little progress" on her case plan. The foster care social worker testified that respondent had "not been able to demonstrate that her skills have improved, since the removal of any of the children, to alleviate the need for them to be in care." We therefore conclude that plenary

evidence exists in the record to support the trial court's Findings of Fact Nos. 9, 16, and 17.

Respondent further contends that her substance abuse issues were overstated, and that there was no evidence that it affected her ability to parent. We are not persuaded. The record is replete with evidence of drug and alcohol abuse. Moreover, a January 2015 capacity to parent evaluation, which was attached to the DSS court summary marked as Exhibit 1, opined that respondent's alcohol and substance abuse issues were "prominent," and her "dependency issues" were among the primary causes "that keep her from acting assertively to remediate the problems the Department has identified."

Respondent additionally argues that the trial court failed to make necessary findings to support cessation of reunification efforts. Specifically, respondent contends the trial court failed to find that further reunification efforts would be futile, or that such efforts would be inconsistent with the children's health, safety, and welfare. Moreover, respondent asserts that the evidence does not support the trial court's conclusion that reunification efforts should cease. We disagree.

The purpose of a permanency planning hearing is to develop a plan "to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C. Gen. Stat. § 7B-906.1(g) (2015). To achieve this goal, a trial court may order DSS to

cease reunification efforts with a parent pursuant to N.C. Gen. Stat. § 7B-507(b). This statute states:

> (b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:
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> > (1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time[.]

N.C. Gen. Stat. § 7B-507(b) (2013).[4]

We note, however, that the trial court is not required to recite verbatim the actual statutory language. Rather, the trial court's order:

> must make clear that the trial court considered the evidence in light of whether reunification "would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." The trial court's written findings must address the statute's concerns, but need not quote its exact language.

In re L.M.T., 367 N.C. 165, 167–68, 752 S.E.2d 453, 455 (2013).

Here, the evidence, as well as the trial court's findings of fact, demonstrate that respondent had performed poorly on her case plan, and that the issues which led

[4] Effective 1 October 2015, North Carolina General Statute § 7B–507(b)(1) has been repealed for all "actions filed or pending on or after that date." N.C. Gen. Stat. § 7B–507(b)(1) (2015).

to the removal of the juveniles had not been remedied. Based on these findings, the court determined that respondent was "incapable of parenting the juveniles and addressing the issues that led to the removal of the juveniles from [her] home." We conclude that while the trial court did not quote the specific statutory language, "the order embraces the substance of the statutory provisions requiring findings of fact that further reunification efforts would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re H.D.*, ___ N.C. App. ___, ___, 768 S.E.2d 860, 862–63 (2015) (citations and quotation marks omitted omitted). Respondent's argument is overruled.

II

Respondent next argues that she received ineffective assistance of counsel, contending that her attorney did not fulfill his basic duty to serve as an advocate on her behalf. *See, e.g.*, *In re S.N.W.*, 204 N.C. App. 556, 560, 698 S.E.2d 76, 79 (2010) ("It is well established that attorneys have a responsibility to advocate on the behalf of their clients." (citations omitted)). Specifically, respondent cites counsel's: (1) failure to effectively challenge the evidence presented by DSS; (2) failure to contest DSS's plan to cease reunification efforts; and (3) capitulation on the ultimate issue such that he abandoned his role as an advocate. We disagree.

"To prevail in a claim for ineffective assistance of counsel, [the] respondent must show: (1) her counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) her attorney's performance was so deficient she was denied a fair hearing." *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005) (citation omitted). "A parent must also establish [she] suffered prejudice in order to show that [she] was denied a fair hearing." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citation omitted).

The record demonstrates that counsel actively participated in the hearing. Respondent's counsel cross-examined several witnesses, presented evidence on respondent's behalf, and attempted to demonstrate that respondent's failure to make progress on her case plan was due to her limited comprehension skills. From this record, we decline to conclude that counsel's representation was objectively unreasonable. *See State v. Fletcher*, 354 N.C. 455, 482, 555 S.E.2d 534, 551 (2001) ("Counsel is given wide latitude in matters of strategy, and the burden to show that counsel's performance fell short of the required standard is a heavy one for [the] defendant to bear."). Moreover, given the overwhelming evidence of respondent's poor performance towards completing her case plan, her inability to remedy the conditions which resulted in the removal of the juveniles, and her incapability of parenting the juveniles, we conclude that respondent has failed to demonstrate prejudice. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).