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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-174

Filed: 4 October 2016

Cabarrus County, Nos. 12 JT 142–43

IN THE MATTER OF: D.T.H. and D.K.H.

Appeal by respondent-mother from order entered 5 October 2015 by Judge William G. Hamby Jr. in Cabarrus County District Court. Heard in the Court of Appeals 7 September 2016.

Hartsell & Williams, P.A., by Stephen A. Moore and H. Jay White, for Cabarrus County Department of Social Services.

Peter Wood for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by Katherine E. Ross, for guardian ad litem.

BRYANT, Judge.

Where the findings of fact were adequate to support the conclusion that respondent-mother's limited progress in correcting the conditions that led to the removal of her children did not meet the standard requirement of reasonable progress, the trial court did not err in terminating respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). We affirm.

Respondent-mother and her children, D.T.H. ("Daniel") and D.K.H. ("Drake"),[1] first became involved with the Cabarrus County Department of Social Services ("DSS") in 2009 after the Child Protective Services ("CPS") division received reports concerning the safety and cleanliness of the home, illegal drug use by respondent-mother and Daniel's father, and possible inappropriate discipline. The case was closed in December 2009, after respondent-mother moved out of the home and complied with DSS recommendations.

DSS, however, received several CPS reports between April and November 2012 that the children had poor hygiene, their immunizations were not up to date, respondent-mother was using illegal drugs, and Daniel had bruises due to inappropriate discipline by respondent-mother's boyfriend. DSS made an unannounced visit to respondent-mother's home on 7 December 2012 and found eight-year-old Daniel home alone. Respondent-mother entered into several safety plans with DSS as a result of the reports. On 11 December 2012, DSS received a final CPS report alleging that the children were previously found unsupervised at a convenience store one mile from their home. Therefore, on 13 December 2012, DSS took the children into non-secure custody and filed juvenile petitions alleging that the children were neglected and dependent.

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

In an order entered 7 February 2013, the trial court adjudicated Drake and Daniel neglected and dependent, based on respondent-mother's consent. In the dispositional portion of the order, the trial court kept the children in DSS custody and ordered respondent-mother to address the issues which led to the children's removal by complying with, *inter alia*, the following directives: abide by the visitation plan; complete a psychological evaluation and parenting assessment and follow all recommendations; complete a domestic violence assessment and follow all recommendations; complete a substance abuse assessment and follow all recommendations; participate in random drug screening; refrain from criminal activity; provide financial support for the children; maintain suitable housing; complete a parenting course; maintain regular contact with DSS; and not allow any contact between her boyfriend and the children.

On 8 January 2015, DSS filed a petition to terminate respondent-mother's parental rights to Drake and Daniel, alleging the following grounds for termination: (1) neglect; (2) dependency; (3) failure to make reasonable progress towards correcting the conditions that led to removal; and (4) 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), (6) (2015). Following a hearing, the trial court entered an order on 5 October 2015 terminating respondent-mother's parental rights based on neglect and failure to make reasonable

progress. The trial court also concluded that it was in the children's best interest to terminate respondent-mother's parental rights. [2] Respondent-mother appeals.

On appeal, respondent-mother contends the trial court erroneously found grounds to terminate her parental rights where those grounds were not supported by clear, cogent, and convincing evidence, and where the court's findings did not concern events during the eight months before the termination hearing. We disagree.

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) (citation omitted).

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. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted). If this Court determines that the findings of fact support one ground for termination, we need not review the other challenged grounds. *See id.* at 540, 577 S.E.2d at 426–27. In order to terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must find that the parent willfully left the juveniles in foster care for over twelve months, and

[2] The trial court also terminated the parental rights of Drake's father. Daniel's father had previously relinquished his parental rights to Daniel.

that the parent has not made reasonable progress to correct the conditions which led to the removal of the juveniles. *In re O.C.*, 171 N.C. App. 457, 464–65, 615 S.E.2d 391, 396 (2005).

Here, the trial court made numerous findings of fact pertinent to this ground for termination. Respondent-mother purports to challenge three of the findings of fact but merely states that she "disputes" them. She does not make any argument that the three disputed findings lack evidentiary support. Consequently, all of the trial court's findings of fact are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009) (concluding findings of fact deemed to be supported by sufficient evidence and binding on appeal where respondent-father failed to challenge findings of fact as lacking adequate evidentiary support).

Respondent-mother, however, argues that the findings of fact are not adequate to support the conclusion that she willfully failed to make reasonable progress in correcting the conditions that led to removal of her children. She essentially claims that the findings are stale because the termination hearing was held in July 2015, but the most recent events described in the trial court's findings occurred in November 2014. Respondent-mother contends she made substantial progress during the eight months between November 2014 and the hearing date. Specifically, she claims the trial court ignored her progress in employment, housing, and visitation. Respondent-mother claims because the trial court failed to make

findings regarding the most recent time period, it erred in concluding that she failed to make reasonable progress towards correcting the conditions that led to removal. We disagree.

Initially, we note that this Court has defined the twelve-month period in N.C. Gen. Stat. § 7B-1111(a)(2) as "the duration of time beginning when the child was 'left' in foster care or placement outside the home pursuant to a court order, and ending when the motion or petition for termination of parental rights was filed[.]" *In re A.C.F.*, 176 N.C. App. 520, 526, 626 S.E.2d 729, 734 (2006) (emphasis omitted).

In the instant case, a review of the trial court's findings of fact show respondent-mother's progress and lack thereof between review hearings in June 2013 and December 2014. Therefore, it appears that the court focused on the time period prescribed by the statute. The findings demonstrate that during this time period, respondent-mother failed to follow recommendations for counseling, failed to complete her parental education course, repeatedly tested positive for illegal drugs, and failed to remain current in her child support obligation. She also committed new criminal acts on several occasions, failed to maintain adequate housing at times, and failed to maintain contact with DSS. All of these subject areas were specifically addressed in the trial court's directives to respondent-mother in the February 2013 disposition order. Therefore, the findings demonstrate respondent-mother failed to

make reasonable progress in correcting the conditions that led to removal of the children.

We agree with respondent-mother's assertion that in measuring a parent's progress, the trial court is not limited to the twelve-month statutory period. *See id.* at 528, 626 S.E.2d. at 735 ("[T]he nature and extent of the parent's reasonable progress . . . is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." (emphasis omitted) (citation omitted)). However, after reviewing the evidence of record, we are satisfied that the trial court also heard evidence regarding respondent-mother's progress in the time period leading up to the July 2015 hearing. Respondent-mother herself testified at the hearing, and she detailed her progress in employment and housing. Additionally, the social worker testified that as of April 2015, respondent-mother's progress had not changed. Therefore, we are satisfied that evidence of respondent-mother's actions in the months leading up to the hearing was before and considered by the trial court.

Even if the trial court had made findings regarding respondent-mother's most recent housing and employment, the trial court was nonetheless justified in concluding that any progress made by respondent-mother was not reasonable. "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) (citation omitted). "Extremely limited progress is not reasonable

progress." *Id.* at 700, 453 S.E.2d at 224–25 (citation omitted). Assuming *arguendo* that respondent-mother made progress in housing and employment, she nonetheless failed to follow counseling recommendations, failed to complete parenting classes, committed new criminal acts, failed to maintain regular contact with DSS, and continued to test positive for illegal drugs or refused to submit to drug screens. Under these circumstances, respondent-mother's limited progress did not meet the standard requirement of reasonable progress. Therefore, the trial court did not err in terminating respondent-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).