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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 18-1260

Filed: 17 September 2019

Wake County, Nos. 16 JT 160-165

IN THE MATTER OF: A.M.C., Z.L.C., M.D.C., W.Y.C., R.N.C., K.M.C.

Appeal by respondent-mother from order entered 5 September 2018 by Judge Monica M. Bousman in Wake County District Court. Heard in the Court of Appeals 5 September 2019.

*Office of the Wake County Attorney, by Mary Boyce Wells, for petitioner-appellee Wake County Human Services.*

*Rebekah W. Davis for respondent-appellant mother.*

*Kilpatrick Townsend & Stockton LLP, by Susan H. Boyles, for guardian ad litem.*

ARROWOOD, Judge.

Respondent-mother appeals from an order terminating her parental rights as to the juveniles A.M.C. “Andre,”<sup>1</sup> Z.L.C. “Zora,” M.D.C. “Mark,” W.Y.C. “Wes,” R.N.C.

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<sup>1</sup> Pseudonyms have been used to protect the identity of the juveniles and for ease of reading.

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“Renee,” and K.M.C. “Kara” (“the children”). Though the order also terminates the parental rights of the children’s father, the father is not party to this appeal. We affirm.

I. Background

On 21 July 2016, Wake County Human Services (“WCHS”) filed petitions alleging six-year-old Andre, eight-year-old Zora, ten-year-old Mark, eleven-year-old Wes, twelve-year-old Renee, and thirteen-year-old Kara were neglected and abused juveniles. WCHS subsequently obtained non-secure custody of the children and placed them in six different foster homes in Wake and Cumberland counties. At the time the petitions were filed, the children resided with respondent-mother and two older siblings in a three-bedroom house.

The petitions alleged WCHS first became involved in April 2014, due to an incident in which the children’s father was driving while intoxicated with one of the children in the car, and ran into a ditch. WCHS initially closed the case, but later reopened it after they continued to receive reports about the family over the next couple years. One report on 16 December 2015 claimed Wes fell out of a tree and injured his arm, but respondent-mother did not take him to see a doctor. Other reports concerned respondent-mother’s frequent intoxication and lack of supervision of the children. There were instances where the children had to go to their maternal grandmother’s home because respondent-mother was so impaired by alcohol. During

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a visit to the home, WCHS observed all of the adults present were impaired and there was no sober adult to look after the children. Respondent-mother also tested positive for alcohol on three drug screens.

In addition, there were reports of domestic violence between respondent-mother and her then-boyfriend, Mr. Pulley. The children witnessed them arguing, fighting, and throwing furniture. Mr. Pulley threatened to kill respondent-mother if she left him, and to shoot up the house. All of the children old enough to converse also reported being abused by him. During one incident, Mr. Pulley called Wes a homophobic slur and threw him against a wall. He also dropped Andre on his head when he was two years old. WCHS additionally noted the children's poor school attendance and poor hygiene, as well as the family's financial instability. There was insufficient food and clothing for the children, the utilities were sometimes disconnected, and respondent-mother allowed her public housing voucher to expire.

At the adjudication and disposition hearing on 30 August 2016, respondent-mother signed a written stipulation to the above facts and requested the trial court accept them as findings of fact by clear, cogent, and convincing evidence. On 26 September 2016, the trial court adjudicated the children neglected under N.C. Gen. Stat. § 7B-101(15), and also adjudicated Andre and Wes abused under N.C. Gen. Stat. § 7B-101(1). It awarded respondent-mother supervised visitation to occur twice a month for a minimum of two hours. In addition, respondent-mother was ordered to

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enter into and comply with an Out of Home Family Services Agreement (“OHFSA”) detailing steps she needed to take in order to be reunified with her children.

On 24 May 2017, the trial court ordered a primary permanent plan of reunification for the children. On 17 October 2017, the court entered a permanency planning order changing to a primary permanent plan of adoption and a secondary plan of reunification for each of the children. WCHS filed a motion for termination of parental rights on 25 January 2018. The motion was heard on 13 June and 11 July 2018 before the Honorable Judge Monica M. Bousman. On 5 September 2018, the trial court entered an order terminating both parents’ parental rights based on N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (3). Respondent-mother filed her notice of appeal on 28 September 2018.

II. Discussion

Respondent-mother argues on appeal the trial court erred in finding grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (3). We disagree.

This Court reviews an adjudication under N.C. Gen. Stat. § 7B-1111(a) to determine (1) whether the trial court’s findings of fact are supported by clear, cogent, and convincing evidence, and (2) whether its findings in turn support its conclusions of law. *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). “[T]he trial court’s findings

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of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997). We review the trial court’s legal conclusions *de novo*. *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015), *disc. review denied*, 369 N.C. 182, 793 S.E.2d 695 (2016) (citation omitted). “A finding of any one of the enumerated grounds for termination of parental rights under [N.C. Gen. Stat. §] 7B-1111 is sufficient to support a termination.” *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (citation omitted).

The trial court found multiple grounds for terminating respondent-mother’s parental rights, including she “willfully left the children in foster care for more than twelve (12) months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting the conditions which led to the removal of the children.” It further noted that “[p]overty is not the sole reason that the parents are unable to care for the children.”

Under N.C. Gen. Stat. § 7B-1111(a)(2):

The court may terminate the parental rights upon a finding [that] [t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

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N.C. Gen. Stat. § 7B-1111(a)(2) (2017). This Court held in *In re O.C.* that “[a] finding of willfulness does not require a showing of fault by the parent[;]” rather, it “is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort.” *In re O.C.*, 171 N.C. App. 457, 465, 615 S.E.2d 391, 396 (2005) (quotation marks and citations omitted).

In order to rectify the conditions that led to the removal of her children, respondent-mother was ordered to enter into and comply with an OFSHA, which required her to do the following:

- A. Complete a cognitive evaluation and follow through with the recommendations;
- B. Should [respondent-mother] be found not to have cognitive delays, that she engage in the PEP evaluation through UNC[;]
- C. Complete a domestic violence evaluation at Interact and follow through with the recommendations of the assessment. The [respondent-]mother will be honest about domestic violence in her life during the intake appointment. She will demonstrate changed behaviors and an understanding of the materials presented through her choices;
- D. Complete parenting education classes through WCHS to include but not limited to Parenting 101 and Parenting Adolescents. [Respondent-mother] will demonstrate learned skills and demonstrate changed behaviors in her interaction with [her] children;
- E. Complete Substance Abuse reassessments as recommended by WCHS. Follow through on the recommendations of her substance abuse re-

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assessment. [Respondent-mother] is to complete random drug screens and hair strand testing as requested;

- F. Continue to engage in the recommended mental health services and therapy;
- G. Obtain and maintain stable and suitable housing sufficient for herself and her children. [Respondent-mother] is to provide WCHS and GAL access to her housing to determine safety. She is to provide WCHS a copy of the lease and documentation of rent and utilities being paid;
- H. Obtain and maintain lawful income sufficient to meet the needs of her and her children. She is to provide documentation of her employment or employment searches to WCHS as requested;
- I. Maintain regular contact with SW at WCHS, notifying WCHS of any change in situation or circumstances within 5 business days;
- J. Provide WCHS with the name of any individual she may be dating or residing with to determine if they are safe and appropriate for the child[ren] to be around;
- K. That [respondent-mother] comply with her visitation agreement;
- L. Sign releases for WCHS to monitor progress in engaged services[;]
- M. Visitation between [respondent-mother] and her children occurs twice a month for a minimum of two hours. These visits are to be supervised by WCHS and/or its designee. [Respondent-mother] is to contact the WCHS SW 24 hours prior to the visit to confirm or the visit will be cancelled. [Respondent-mother] needs to be sober and free from the smell of alcohol for

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visitation to proceed.

In its order, the trial court makes numerous findings of fact supporting its conclusion respondent-mother did not make reasonable progress toward correcting the conditions which led to the removal of her children. These facts were supported by competent evidence in the record concerning her failure to satisfy the conditions of the OHFSA. Respondent-mother argues the trial court erred because she did not sufficiently address the concerns that led to the removal of her children, and points to progress she made in each area of concern. We address each of her arguments in turn below.

1. Cognitive and PEP Evaluations

Respondent-mother was ordered to “[c]omplete a cognitive evaluation and follow through with the recommendations[.]” She completed the evaluation in December 2016. However, she failed to follow through with recommendations that she continue mental health treatment at Turning Point and residential services at Healing Transitions. Respondent-mother left Healing Transitions before completing treatment. Her social worker testified that Turning Point did not have her in their system as of 11 June 2018. Vision Behavioral Health Services told the social worker respondent-mother had four treatments with them, with the last one occurring in March 2017. Respondent-mother did not communicate with her social worker whether she was engaged in therapy after January 2017.



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Respondent-mother also argued she was excused from the PEP evaluation because her social worker told her it would not be beneficial. However, her social worker testified that WCHS did not feel that a PEP evaluation would be beneficial because they try to do them at the beginning of the case, and too much time had lapsed since the case had begun. In addition, respondent-mother had lacked consistency in meeting her case plan objectives.

Respondent-mother essentially argues that because she complied with some of the terms of the OHFSA, she did make reasonable progress toward correcting conditions that led to the removal of her children. However, this Court has held “[a] finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children.” *In re O.C.*, 171 N.C. App. at 465, 615 S.E.2d at 396 (quotation marks and citations omitted). Thus, the trial court’s determination that respondent-mother willfully left her children in foster care for over twelve months without making reasonable progress is not precluded by the fact that she complied with some of the terms of the OHFSA.

2. Domestic Violence Evaluation

Before the children were removed from her home, respondent-mother and her boyfriend, Mr. Pulley, had engaged in domestic violence which included “fighting, arguing, and throwing furniture in the presence of the children.” Mr. Pulley had threatened to kill respondent-mother and also physically and verbally abused some

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of the children. The trial court specifically found that one of the reasons the children were removed from the home was because of this domestic violence. At the hearing, the trial court also found:

30. [Respondent-mother] has not participated in domestic violence victim's counseling.
31. [Respondent-mother] attended one session of Parenting Adolescents. [Respondent-mother] completed Parenting 101. She [has] not demonstrated that she gained any new skills or insights from this program in her interactions with the children or in her interactions with the professionals involved in this case. Additionally, [Respondent-mother] attended Parenting 101 with Mr. Pulley, her boyfriend who abused [Wes] and [Andre], and who committed acts of violence against her, as well.

The trial court erred when it found respondent-mother had not participated in domestic violence victim's counseling. She had received safety planning and domestic violence education services through InterAct. However, there was evidence indicating respondent-mother failed to learn from and change her concerning behavior, including her continued relationship with the man who had abused her and two of her children. As such, there was clear evidence supporting the trial court's finding of fact number 31, as well as its conclusion she failed to make reasonable progress.

3. Parenting Education and the Demonstration of Parenting Skills

Respondent-mother completed Parenting 101 and Parenting Adolescents

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classes as required. However, she was also required to demonstrate learned skills and changed behaviors during her visits with her children. The trial court found that “[t]he social workers assigned to the case attempted to provide parenting coaching during visits. [Respondent-mother] would briefly show an improvement, but those gains did not carry over from visit to visit.” A social worker described the visits as “chaotic,” and testified that while respondent-mother would involve herself with one or two of the children at a time, the other children would “do whatever they want” and the social worker would have to be the one to correct them. WCHS did not recommend moving her to a lower level of supervision due to her inconsistency. Thus, there was clear evidence showing respondent-mother did not demonstrate learned or changed parenting behavior, which supports the trial court findings. Respondent-mother argues that she was not allowed to demonstrate her parenting skills with fewer than eight children. However, respondent-mother has eight children, and is seeking to regain custody of all of them. Accordingly, any progress in parenting skills must be judged as to all children.

4. Substance Abuse and Mental Health

Under the OHFSA, respondent-mother was also ordered to “[c]omplete Substance Abuse reassessments as recommended by WCHS. Follow through on the recommendations of her substance abuse re-assessment . . . [and] complete random drug screens and hair strand testing as requested[.]” In addition, she was required

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to “[c]ontinue to engage in the recommended mental health services and therapy.”

However, the trial court found that she failed to satisfactorily meet these requirements, noting in its findings of fact that:

21. [Respondent-mother] did not satisfactorily participate in mental health treatment. She did not receive treatment at Turning Point, as recommended. She attended a total of four individual therapy sessions at Visions; three of those sessions were in March 2017, and the final session was six months later, in September 2017. This is inadequate to address her mental health needs.

.....

23. [Respondent-mother] completed substance abuse assessments on October 19, 2016, May 17, 2017, and April 10, 2018. She was diagnosed with Alcohol Use Disorder – Severe. It was recommended that [respondent-mother] enter and complete residential substance abuse treatment, participate in vocational training, and participate in individual parenting education/coaching.

24. [Respondent-mother] received residential substance abuse treatment at Healing Transitions for approximately four months, but she did not complete treatment there, and received no other substance abuse treatment.

25. Wake County Human Services made several referrals for [respondent-mother] to submit to drug screens, with results as follows: February 29, 2016, negative; April 1, 2016, negative; August 18, 2016, did not submit; December 28, 2016, negative; February 1, 2017, did not submit; February 7, 2017, positive for Tramadol, which is not prescribed to [respondent-mother]; February 13, 2017, negative;

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March , 2017, negative, but dilute noted; March 14, 2017, did not submit; March 17, 2017, did not submit; March 20, 2017, did not submit; April 28, 2017, negative; May 2, 2017, did not submit; May 15, 2017, negative, but dilute noted; May 19, 2017 did not submit; August 16, 2017, did not submit; March 27, 2018, did not submit; April 10, 2018, did not submit; May 14, 2018, hair sample, positive for ethanol, low creatine level, not diluted; May 29, 2018, did not submit; June 8, 2018, did not submit.

Respondent-mother argues that the trial court's finding of fact number 21 is not supported by competent evidence because she had received substance abuse and mental health counseling for some months in summer 2017. She claims the court did not have clear evidence that she did not make progress in counseling because her therapist left the agency and took the records with her.

In *In re B.S.D.S.*, we found that when respondent claimed to have completed her therapy sessions, but had no documentation, even if the trial court had accepted her testimony as credible it could still find that, under the totality of the circumstances, respondent failed to make an effort to improve her situation. 163 N.C. App. 540, 545-46, 594 S.E.2d 89, 93 (2004). “[W]hen a trial judge sits as both judge and juror, as he or she does in a non-jury proceeding, it is that judge’s duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.” *Matter of Patron*, \_\_ N.C. App. \_\_, \_\_, 792 S.E.2d 853, 860 (2016) (quoting

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*In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984)) (internal quotation marks omitted). In the instant case, there was more than enough evidence in the record to support a trial court's finding that respondent-mother's testimony was not credible. Even, assuming *arguendo*, she was found credible, the trial court could still find, under the totality of the circumstances, that she failed to make an effort to improve her situation. See *In re B.S.D.S.*, 163 N.C. App. at 545-46, 594 S.E.2d at 93.

Respondent-mother also argues that she made progress to address her alcohol issues because she had been in contact with her former substance abuse and mental health provider. However, she was not scheduled to start attending alcohol treatment classes until the week after the trial court hearing. Furthermore, respondent-mother admitted at the hearing that she did not have a sponsor, but had one in mind and was "taking it one step at a time because I don't want to rush into things and then feel like I made a bad decision."

The evidence also shows respondent-mother only completed seven of the nineteen random drug screenings that were requested of her by WCHS. She failed to appear for the other drug screenings, including the one on 8 June 2018, which was only five days before the termination hearing. Respondent-mother admitted to drinking alcohol since leaving Healing Transitions and has surrounded herself with individuals who drink and are not supportive of her recovery. When a social worker made an unannounced visit to her residence, he saw a milk crate filled with crushed

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beer cans outside. A social worker sent a re-referral for respondent-mother to have a second substance abuse re-assessment, which she ignored. Respondent-mother admitted to being clean for “two weeks at the most” during the termination hearing. When the court asked why she was not prepared for the hearing and did not have the “documents that you say are out there somewhere” she answered, “poor judgment, lack of judgment on my part.”

Thus, there is clear, cogent, and convincing evidence supporting the trial court’s finding that respondent-mother continues to struggle with substance abuse and mental health related issues, and has not made reasonable progress in these areas.

5. Housing

The trial court found that respondent-mother “has not established safe, stable housing that is suitable for herself and the children at any point since the filing of the underlying petition.” Respondent-mother contends that she had a voucher for a one bedroom apartment, and if the children were returned to her then she would be able to obtain a voucher for a home suitable for the children.

Prior to obtaining the voucher, respondent-mother had lived at her mother’s residence which the trial court deemed “not appropriate for the children, in that it is a small trailer with transient household members; there is inadequate space for the children, and it has roaches.” As of the hearing, respondent-mother had not signed

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the paperwork for the one bedroom apartment yet. Regardless, a one bedroom apartment is too small for eight children. Respondent-mother testified that she would be put “in the moving process” and be able to apply for a more suitable home after the children come back to her. However, as of the time of the hearing, she had failed to obtain satisfactory housing suitable for her children. Accordingly, the court’s finding on this point was supported by the clear evidence.

6. Contact with WCHS and Signing Releases

The trial court found that “[respondent-mother] is typically responsive to contact initiated by the social worker, but she has rarely initiated contact herself.” Respondent-mother contends that the social worker testified that she has maintained “[f]airly” consistent contact with him. However, the social worker also testified that respondent-mother rarely contacted him. Respondent-mother argues that, regardless, she met with the social worker once a month, informed him when she got a job, showed him her housing voucher, informed him of the classes she had completed, and signed releases so that the social worker could communicate with her service providers. We agree there is clear evidence supporting a finding respondent-mother complied with this order of the OHFSA, but note it does not cancel out the progress she failed to make elsewhere.

7. Visitation

Respondent-mother argues that she made progress toward reunification with



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the children because once the visitation schedule was adjusted she made every visit and brought the children snacks and affection. However, there was evidence in the record that the children were disappointed because respondent-mother had missed visits with them. Prior to changing the visitation schedule, she had only three visits with all her children, and a fourth with the girls, from July 2016 to May 2017. While respondent-mother contends the visitation schedule was changed because of the difficulty of coordinating the logistics of the visits, since the children were in six different placements and she had no transportation, her social worker testified the change was due to “difficulty in coordinating with [respondent-]mother.” In addition, respondent-mother also came to a visit in March 2018 smelling like alcohol, despite clear instructions from the trial court that she was to be sober and free of the smell of alcohol at these visits.

This Court has found children to be willfully left in foster care where a respondent did not comply with the Family Services Case Plan and did not make reasonable progress toward correcting the circumstances that led to the removal of the children. *See Matter of A.A.S.*, \_\_ N.C. App. \_\_, \_\_, 812 S.E.2d 875, 882 (2018); *In re A.R.H.B.*, 186 N.C. App. 211, 221-22, 651 S.E.2d 247, 255 (2007). Respondent-mother’s failure to comply with her case plan constituted clear, cogent, and convincing evidence supporting the trial court’s findings and conclusion that she had not made reasonable progress towards correcting the circumstances that led to the

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removal of her children. Accordingly, the trial court had adequate grounds to terminate respondent-mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). Because one ground is supported, we need not address the other grounds found by the trial court. *See In re Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 426.

III. Conclusion

For the foregoing reasons, we affirm the order terminating respondent-mother's parental rights.

AFFIRMED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).