IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1314

Filed: 19 November 2019

Cabarrus County, Nos. 16 JT 50–52

IN THE MATTER OF: T.G.H., Y.G.L., S.N.L.

Appeal by respondents from orders entered 27 September and 1 October 2018 by Judge William G. Hamby, Jr. in Cabarrus County District Court. Heard in the Court of Appeals 4 September 2019.

*Hartsell & Williams, PA, by Austin "Dutch" Entwistle III, for petitioner-appellee.*

*Dorothy Hairston Mitchell for respondent-appellant mother.*

*Robert W. Ewing for respondent-appellant father.*

*The Huffman Law Firm PLLC dba Odin Law and Media, by Brandon J. Huffman, for guardian ad litem.*

DIETZ, Judge.

Respondents appeal the termination of their parental rights. Mother argues that the trial court erred in concluding that termination was in her children's best interests. Father argues that there were insufficient grounds to terminate his parental rights.

We reject these arguments. The trial court's findings readily support its conclusion that grounds for termination existed, and the court's best interests determination was well within the court's sound discretion. We therefore affirm the trial court's orders.

**Facts and Procedural History**

Father and Mother have two children, Yonna and Sam.[1] Father's child with a different mother, Tara,[2] also lived with Respondents.

On 2 March 2016, the Cabarrus County Department of Human Services received a report that Tara missed 13 days of school and then returned with a swollen eye. The next day, a school social worker interviewed Tara. Tara first stated that she fell into a door, but then told the social worker that Mother punched her. A DHS social worker interviewed Tara and Tara reported that Mother hit her whenever Father left the home. The social worker observed a small cut over Tara's eye and Tara explained that she got it when Mother slapped her face and caused her to fall. Tara later told a police detective that Mother hit her in the face daily, but that Respondents both told her to tell DHS and the police that she was lying and Mother did not hurt her. Tara also reported that Mother kicked her in the throat, punched her chest, called her names, and made her eat rotten food.

[1] We use pseudonyms to protect the identities of the juveniles.

[2] Tara's mother is not a party to this appeal.

Respondents entered into a safety agreement with DHS providing that Tara would not be left alone with Mother and would be placed in the care of a family friend. But on 9 March 2016, DHS received another report that the family friend had called Respondents to pick up Tara, that Respondents either refused or would not answer the phone, and that the family friend did not have food to feed Tara. DHS made an unannounced home visit on 15 March 2016 and found Tara unsupervised with Mother. DHS then placed Tara in the care of her paternal great aunt and uncle. But again, on 9 April 2016, Father picked up Tara and left her unsupervised with Mother. On 15 April 2016, a social worker visiting the home observed cocaine and marijuana in Respondents' bathroom where it could be reached by Yonna and Sam. That day, DHS filed petitions alleging that all three children were abused and neglected and obtained nonsecure custody of them. Tara remained with her great aunt and uncle. Yonna and Sam were placed in foster homes.

Mother later was charged and convicted of child abuse for hitting Tara. Father was charged and pleaded guilty to child abuse for allowing Mother to abuse Tara. Respondents were ordered to comply with DHS case plans. After a hearing on 9 June 2016, all three children were adjudicated abused and neglected based on improper supervision, improper care, and abuse. Respondents were ordered to complete psychological evaluations, refrain from illegal substances, submit to drug screens,

attend a parenting course, follow a supervised visitation schedule, attend meetings for the children, obtain suitable housing, and maintain contact with social workers.

From 11 August 2016 until 8 February 2018, Father disappeared and did not have any contact with the children, the court, DHS, or the guardian ad litem. On 26 January 2017, DHS filed a petition to terminate Father's parental rights on the grounds of abuse, neglect, dependency, and failure to pay costs of care under N.C. Gen. Stat. § 7B-1111(a)(1), (a)(3), and (a)(6). Father did not respond to this petition and DHS did not proceed on it.

On 8 February 2018, DHS again filed motions to terminate Respondents' parental rights on the grounds of abuse, neglect, willful failure to make reasonable progress to correct the conditions that led to removal, failure to pay costs of care, dependency, and willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7). On 8 March 2018, Father filed a response to DHS's motion as to Tara. On 12 March 2018, Respondents filed joint replies to DHS's motions as to Yonna and Sam.

The trial court heard the termination motions on 11 May and 18 July 2018. At the hearing, the trial court heard evidence that Father was in violation of his parole from his child abuse conviction, that Father made misrepresentations on his psychological and substance abuse evaluation intake forms, and that Father refused to complete a substance abuse assessment. The court heard evidence that although

Mother completed her recommended 42 hours of substance abuse treatment, Mother tested positive on 10 out of 20 drug screens over the two-year period from 2016 to 2018, and eventually began refusing drug screens. Mother did not obtain or maintain stable housing. When DHS became involved, Respondents were living, apparently without permission, in someone else's home and at the time of the termination hearing, Mother was living with her boyfriend and his mother. The boyfriend refused to complete a drug screen and his mother tested positive. Mother also failed to consistently take advantage of weekly visitation with the children. The trial court also heard testimony that Yonna, Tara, and Sam were doing well in placements with people who would like to adopt them.

On 1 October 2018, the trial court filed written orders terminating Respondents' parental rights on the grounds of abuse and neglect under N.C. Gen. Stat. § 7B-1111(a)(1), willful failure to make reasonable progress to correct the conditions that led to removal under N.C. Gen. Stat. § 7B-1111(a)(2), failure to pay costs of care under N.C. Gen. Stat. § 7B-1111(a)(3), willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(6), and dependency under N.C. Gen. Stat. § 7B-1111(a)(7). Respondents appealed.

## Analysis

### I. Mother's Appeal – Best Interests Determination

Mother argues that the trial court erred in determining that termination of her

parental rights was in her children's best interests because its conclusion that adoption was in the children's best interest was erroneous, the court failed to appreciate her bond with the children, and the court failed to appreciate her progress on her case plan at the time of the termination hearing. We reject these arguments because the trial court properly considered all of the relevant statutory factors and its best interests determination was well within the court's sound discretion.

"The trial court's determination that the termination of parental rights is in the best interests of the juvenile is reviewed for abuse of discretion, meaning that the appellant must demonstrate that the court's ruling is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *In re C.I.M.*, 214 N.C. App. 342, 347, 715 S.E.2d 247, 251 (2011). In making its best interests determination, "the trial court shall consider the following criteria and make written findings regarding the following that are relevant":

> (1) The age of the juvenile.
> (2) The likelihood of adoption of the juvenile.
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
> (4) The bond between the juvenile and the parent.
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a). Consideration of these statutory factors is mandatory and failure to comply with the statutory mandate is reversible error. *In re E.M.,* 202

N.C. App. 761, 764, 692 S.E.2d 629, 631 (2010).

Here, the trial court considered and made written findings regarding all of the relevant statutory factors. It found that Sam and Yonna were two and nearly six years old respectively; that they are both doing well and making progress in a pre-adoptive home and have a high likelihood of adoption; that they have been in the care of DHS for over two years and need permanence; that termination will accomplish their permanent plan of adoption; that Yonna and Sam "have little bond with their parents" because "[t]here is no discernible difference in the bond between the juveniles and the parents and the bond between the juveniles and the CCDHS social worker or GAL"; and that "[t]here is a wonderful relationship between the juveniles and the proposed adoptive parents." Because the trial court made specific findings on each of the statutory factors and those factors support the trial court's decision, that decision was not "so arbitrary that it could not have been the result of a reasoned decision" and thus was within the trial court's sound discretion. *C.I.M.*, 214 N.C. App. at 347, 715 S.E.2d at 251.

Mother contends that the trial court failed to consider her bond with Yonna and Sam, but the court's findings rebut this argument. The court found that there was "little bond" with Mother because the juveniles had no different response to Mother than to their social worker or the guardian ad litem.

Mother also argues that the trial court failed to consider the progress she had made on her case plan at the time of the termination hearing. But Mother's progress on her case plan is not a statutory ground that the trial court *must* consider in the best interests determination, and the court was within its discretion to determine that this progress was not a sufficiently relevant factor in its analysis. *See* N.C. Gen. Stat. § 7B-1111(a)(2); *In re O.C.*, 171 N.C. App. 457, 464–65, 615 S.E.2d 391, 396 (2005).

Finally, Mother contends that the trial court erred in concluding that adoption is in the children's best interests. The court made findings explaining why adoption was in the children's best interests. Moreover, adoption had been the permanent plan for Yonna and Sam for a year at the time of the termination hearing, since May 2017, and Mother did not challenge that permanency planning determination. The statute requires the court to consider whether termination would accomplish the permanent plan. N.C. Gen. Stat. § 7B-1110(a)(3). The trial court found that it would because the children are in a pre-adoptive placement.

Accordingly, we hold that the trial court acted well within its sound discretion by determining that termination of Mother's parental rights was in the children's best interests.

## II. Father's Appeal – Grounds for Termination

Father argues that the trial court erred by finding grounds for termination

based on willful failure to make reasonable progress, willful abandonment, dependency, abuse, neglect, and failure to pay costs of care. We reject Father's arguments because the trial court properly found the existence of at least one ground for termination.

"In the adjudicatory stage, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that one of the grounds for termination of parental rights set forth in N.C. Gen. Stat. § 7B–1111(a) exists. The standard for appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings of fact support its conclusions of law." *In re C.C.*, 173 N.C. App. 375, 380, 618 S.E.2d 813, 817 (2005) (citations omitted). The trial court's conclusions of law "are fully reviewable *de novo*." *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd,* 363 N.C. 368, 677 S.E.2d 455 (2009).

Finally, and importantly, "where the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd,* 360 N.C. 360, 625 S.E.2d 779 (2006).

Under N.C. Gen. Stat. § 7B-1111(a)(2), grounds exist for termination of parental rights where "[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." "Under N.C.G.S. § 7B–1111(a)(2), the twelve-month period begins when a child is left in foster care or placement outside the home pursuant to a court order, and ends when the motion or petition for termination of parental rights is filed." *In re J.G.B.*, 177 N.C. App. 375, 383, 628 S.E.2d 450, 456 (2006). "A finding of willfulness does not require a showing that the parent was at fault. Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re J.S.L.*, 177 N.C. App. 151, 160, 628 S.E.2d 387, 392 (2006).

"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. 457, 465, 615 S.E.2d 391, 396 (2005). "[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." *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006). "Extremely limited progress is not reasonable progress." *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224–25 (1995).

Father argues that the trial court erred in finding the ground for termination of willful failure to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2) as to Tara because that ground was not pleaded in DHS's original January 2017

petition and DHS could not amend its petition to add it. And he argues that the trial court erred in finding that ground as to all three children because it failed to consider his progress up to the time of the termination hearing.

We reject both of these arguments. First, DHS's second petition to terminate Father's parental rights—the petition Father responded to and the court proceeded on—properly alleged the ground of failure to make reasonable progress and the trial court properly considered all of the evidence before it in concluding that this ground existed. Father relies on case law holding that a petitioner may not "amend a petition or motion for termination of parental rights to conform with the evidence presented at the adjudication hearing" because if the respondent "lacks notice of a possible ground for termination, it is error for the trial court to conclude that such a ground exists." *In re B.L.H.*, 190 N.C. App. 142, 146–47, 660 S.E.2d 255, 257–58, *aff'd,* 362 N.C. 674, 669 S.E.2d 320 (2008); *see also In re G.B.R.*, 220 N.C. App. 309, 314, 725 S.E.2d 387, 390 (2012).

But that precedent is inapplicable here because DHS filed the new petition, which added the additional grounds, before Father responded to the original petition. This occurred well before the termination hearing and DHS never proceeded on the original petition because the circumstances in this case materially changed after Father reappeared and the children had been in DHS custody for a longer period of time. In other words, DHS abandoned its original petition without ever proceeding

on it and filed a new one in light of changed, and more serious, circumstances. This was not a case in which DHS sought an amendment to conform a petition to evidence presented at the termination hearing. Father was not prejudiced by the addition of a ground to the petition because he had notice of all of the grounds alleged well in advance of the hearing. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

Father also argues that he was not permitted to present, and the trial court failed to consider, evidence of his progress between the time DHS filed the February 2018 petition and the termination hearing. But Father does not direct this Court to any specific evidence he purportedly was prevented from introducing and which would have impacted the trial court's conclusion that he failed to make reasonable progress. He contends that, at one point during the hearing, DHS argued that his probation officer should only be permitted to testify regarding best interests and not regarding grounds for termination because the officer only had knowledge of facts occurring after the petition was filed.

But after a colloquy between the court and DHS's counsel, DHS explained that its concern was whether it would fully be able to cross-examine the officer due to confidentiality issues. The officer clarified that she "can only testify on probation violations" and cannot "go into further details of anything else that we've talked about." The trial court then permitted the officer to testify that Father completed a

substance abuse assessment, a parenting class, and a mental health assessment between December 2017 and March 2018 as part of his probation compliance. Although the trial court sustained an objection regarding the parenting class completion in March of 2018, Father later testified about his completion of the course, with his counsel stipulating that it was for probation compliance and Father "didn't complete the parenting class according to the case plan." Father also testified about his efforts to visit the children and provide for them.

Finally, nothing in the trial court's order or the record suggests that the trial court failed to consider Father's efforts between the filing of the petition in February 2018 and the hearings in May and July 2018. Instead, the record indicates that the court considered these efforts but found that Father did not make "sufficient progress to permit the Court to find that the juveniles could safely be returned to his home." This finding is appropriate under the law. Minimal progress and effort to follow a case plan and regain custody is not reasonable progress. *Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 224–25.

In sum, the trial court's detailed findings readily support the court's conclusion that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(2) because, although Father did make some efforts, "the evidence supports the trial court's determination that [he] did not make sufficient progress in correcting the conditions

that led to the child[ren]'s removal." *In re Fletcher*, 148 N.C. App. 228, 235–36, 558 S.E.2d 498, 502 (2002).

Accordingly, we hold that the trial court did not err in terminating Father's parental rights on the ground of willful failure to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2). Because we affirm on the ground of failure to make reasonable progress, we need not reach Father's arguments concerning the other grounds found by the trial court. *P.L.P.*, 173 N.C. App. at 8, 618 S.E.2d at 246.

**Conclusion**

For the reasons discussed above, we affirm the trial court's orders.

AFFIRMED.

Judges TYSON and YOUNG concur.

Report per Rule 30(e).