IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-161

Filed 7 November 2023

Guilford County, Nos. 17JT292-296, 19JT468-469

IN THE MATTER OF: J.P.E., J.A.B., N.Q.B., N.C.E., K.L.E-S., F.R.E., H.L.E.

Appeal by respondent from judgment entered 11 October 2022 by Judge Tonia Cutchin in Guilford County District Court. Heard in the Court of Appeals 4 October 2023.

Ewing Law Firm, P.C., by Robert W. Ewing, for the respondent-appellant.

Mercedes O. Chut, for the petitioner-appellee Guilford County Department of Health and Human Services.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Jackson W. Moore, and David R. Ortiz, for the Guardian ad Litem.

TYSON, Judge.

Respondent-mother ("Respondent") appeals from an order terminating her parental rights to seven of her eight children: J.P.E. ("Josh"), J.A.B. ("John"), N.Q.B. ("Nancy"), N.C.E. ("Nate"), K.L.E-S. ("Kathy"), F.R.E. ("Fran"), and H.L.E. ("Heather"). *See* N.C. R. App. P. 42(b) (pseudonyms are used to protect the identity of the juveniles). We affirm the termination order.

I. Background

Respondent is the mother of eight children, seven of whom are the subject of this appeal. Kathy was born in November 2007; Nate in October 2010; Nancy in December 2011; John in August 2014; Josh in December 2016; and, Fran and Heather were born in October 2019 (collectively the "Children"). Respondent's eighth child, born 1 January 2021 was placed with a Temporary Safety provider home by the Guilford County Department of Health and Human Services ("DSS") and is not involved in this appeal. Respondent had four previous involvements with DSS.

Respondent voluntarily brought and presented then seven-month-old Josh for a visit at Cone Family Practice on 11 July 2017. During the visit, Respondent asked of medical personnel: "How can I see if he has a brain bleed?" Respondent told medical personnel Josh sleeps in her bed or on the couch and sometimes falls off. Respondent reported Josh's head had been swollen for the past two weeks. Josh was admitted to the hospital for a bulging fontanelle, one of two major soft spots on the top of an infant's head, and the failure to thrive diagnosis. A CT scan showed no abnormalities.

Respondent also reported she allows her older children to feed Josh and asserted domestic violence had occurred during her pregnancy. Josh's evaluation placed him in the bottom third percentile for growth and he was diagnosed with failure to thrive. Hospital staff warned Respondent not to sleep with Josh on the overnight guest cot provided in the room. Despite these warnings, hospital staff observed Respondent sleep with Josh on the cot. Hospital staff removed Josh from

the cot several times. Hospital staff also noted Respondent screaming and acting in a belligerent manner toward her other children.

DSS received a report on 12 July 2017. That day, DSS placed Josh, John, Nancy, Nate, and Kathy with a temporary safety provider. DSS also arranged for Respondent to receive in-home counseling.

Josh, John, Nancy, Nate, and Kathy were returned to Respondent's care on or about 31 July 2017. DSS subsequently received reports John was almost struck by a passing car after Respondent had left him with a friend to watch; Respondent was about to be evicted from the family home for "poor housekeeping;" allowing the children to play outside unsupervised; and, requiring then nine-year-old Kathy to provide significant care for her younger siblings.

Respondent completed a parenting capacity evaluation and a psychological evaluation on 28 July 2017. Michael A. McColloch, Ph.D. completed Respondent's evaluation and diagnosed her with an IQ of 76, Post-Traumatic Stress Disorder and Major Depression. Dr. McColloch also found Respondent showed a "high level of personality difficulties," including "avoidant, schizotypal, paranoid, dependent, negativistic and masochistic personality characteristics." Dr. McColloch documented Respondent had been "diagnosed with mental retardation in 2010 at UNC-G at the Psychology Clinic."

DSS filed a petition alleging Josh, John, Nancy, Nate, and Kathy were neglected and dependent on 7 August 2017 and took nonsecure custody of those

children. The trial court adjudicated these children as neglected and dependent on 6 October 2017.

Respondent entered into a DSS case plan to purportedly address her: (1) emotional and mental health; (2) substance abuse issues; (3) parenting skills; (4) to obtain and maintain suitable housing; (5) to obtain and maintain employment; and, (6) to maintain communications with DSS and the trial court.

DSS also required Respondent to: (1) complete a mental health assessment and follow recommendations; (2) participate in therapy; (3) use medication management as recommended; (4) complete a substance abuse assessment; (5) cooperate with random drug screens; (6) participate in and complete the Parent Assessment Training and Education Program ("PATE"); (7) complete a parenting/psychological evaluation; and, (8) follow DSS' recommendations.

Respondent was additionally instructed by DSS to avoid: (1) the use of non-prescribed drugs; (2) alcohol; (3) participate in outpatient mental health therapy; (4) participate in a psychiatric evaluation for medication management; and, (5) follow up with referrals for domestic violence counseling and parenting classes.

Respondent completed the required substance abuse and mental health assessment on 2 October 2017. Respondent also began therapy in the fall of 2017, but had stopped attending by 21 February 2018.

The district court held a permanency planning hearing on 21 February 2018 and found Respondent had secured and maintained housing, but concluded it was

inadequate due to the unhygienic, cluttered, and unsanitary conditions inside the house. Respondent did not have a current therapist, and she had not complied with the mental health or substance abuse components of her case plan.

Respondent's social worker attempted to teach Respondent to perform household cleaning; proper food storage and preservations skills; and, to maintain pest control. Respondent failed to take out trash, sweep the floor of debris, or dispose of food or food containers, which attracted and caused roach infestations inside the house.

Respondent received another eviction notice on 7 March 2018 from her landlord due to unhygienic and unsanitary conditions inside the home and asserting Respondent was smoking marijuana indoors.

Respondent's social worker attempted a home visit on 20 April 2018, but Respondent did not answer the door. The social worker left a voucher for Respondent to take a random drug screen. Respondent did not complete the screen. Respondent was asked to submit to a hair follicle test, which she refused. Respondent had agreed to submit to a urine test, but she never completed the test.

The trial court held another permanency planning hearing on 13 June 2018. The trial court found Respondent had returned and attended three of seven scheduled therapy sessions since the 21 February 2018 permanency planning hearing. The trial court also found Respondent had enrolled in, but had not attended domestic violence counseling. Respondent attended a psychiatric evaluation and was prescribed

medication on 14 May 2018.

Respondent discussed her drug tests with her social worker on 12 July 2018. Respondent did not say why she had refused prior tests although she explained she used marijuana to sleep. She also admitted to using cocaine, but asserted it was prescribed.

The trial court held another permanency planning hearing on 8 August 2018. The district court ordered Respondent to undergo a urine drug test, which results returned positive for cocaine. At the 7 September 2018 permanency planning hearing, Respondent also admitted to having smoked marijuana two to three weeks earlier. Respondent did not submit to further drug screens from 7 September 2018 until 20 March 2019.

DSS asked Respondent to submit to nineteen drug screens between 7 November 2021 and 9 August 2022. Respondent completed two screens: one on 7 November 2019; and, one on 6 January 2020. Both screens were negative.

From November 2019 until 9 August 2022, Respondent attended therapy sessions five times. Respondent reported she did not need to take her prescribed mental health medications and did not comply with recommendations for medication management.

DSS learned Respondent was ten weeks pregnant with twins on 17 June 2019. Respondent's social worker spoke with her the next day. Respondent denied being pregnant, despite DSS having proof of her pregnancy. Respondent's social worker

also sent a letter inquiring if she was receiving pre-natal care. Respondent did not respond.

Respondent gave birth to twin daughters, Fran and Heather, on 24 October 2019. The twins were born at 33 weeks and remained hospitalized for five weeks after birth. Their juvenile petitions did not allege any positive drug screening or testing was completed.

One of the putative fathers, a registered sex offender with multiple assault convictions, visited Respondent at the hospital and argued with hospital staff. Respondent refused to provide the names of the putative fathers of the twins until 22 January 2020. Both putative fathers had prior criminal charges involving minor children. Both putative fathers were later excluded as being Fran's and Heather's father by paternity testing.

DSS filed a petition alleging Fran and Heather were neglected and dependent on 6 November 2019 and took nonsecure custody of Fran and Heather. The trial court adjudicated Fran and Heather neglected and dependent on 19 February 2020.

Respondent's Duke Energy service was cancelled due to an overdue balance on 6 August 2018. Respondent was padlocked from her apartment because of the unsanitary conditions and her allowing three individuals inside, who were on the landlord's banned list to live there.

At the 7 September 2018 permanency planning hearing, the court found Respondent did not maintain housing and was sleeping inside a van. Respondent

was unable to locate permanent housing after her August 2018 eviction and resided at a Salvation Army homeless shelter at the time of the 20 March 2019 permanency planning hearing. In April 2019 Respondent obtained new housing, but it contained only two bedrooms and one bathroom, which the court found was inadequate for one adult and seven children. Respondent's social worker documented her home was infested with roaches during a home visit on 30 May 2019.

Respondent failed to cooperate with an attempted DSS home visit on 30 October 2019. Respondent's social worker visited on 14 December 2019, observed no furniture present inside the house, other than: an air mattress in one bedroom; a twin mattress in the other bedroom; and, a bed, nightstand, and small sofa in the living room. Respondent's social worker also observed the home was cluttered with old drink bottles and clothing on the furniture.

Respondent's social worker attempted another home visit on 4 March 2020, but Respondent did not answer the door, even though the social worker heard the television playing inside the house. Respondent did not return the social worker's calls to schedule a home visit on 6 March 2020 and 13 March 2020. On 8 April 2021 Respondent told DSS she did not want anyone inside her home because it was not clean and was in a state of disarray. DSS was unable to access Respondent's home after the 4 March 2020 visit.

Respondent moved into a My Choice Extended Stay Hotel in January 2022. Respondent's social worker attempted visits on 19 April and 23 June 2022, but was

not allowed to come inside. The social worker was allowed inside the room on 22 July 2022 and observed it "was not clean or sanitary . . . there was food everywhere, clothes everywhere, and the home . . . had an odor."

Respondent received Supplemental Security Income for the duration of the case. **(R p 254)** Respondent also reported she was working at fast food restaurants, but she never provided DSS with documentation of income.

Respondent completed PATE on 22 January 2019, but the coordinator concluded Respondent had learned little from the program. Respondent stated she already knew what to do and did not appear receptive to new ideas or to learning new methods to live responsibly.

During visits with the children, DSS observed Respondent struggled to watch all children simultaneously for the duration of the two-hour visit, discussed purported inappropriate topics with the children, did not ask the caregivers many questions about the children, attended with a foul body odor, failed to adequately address the children's behaviors, and fed the twins a baby formula that contained the children's allergens. Respondent's visits also became sporadic with the children.

DSS filed a petition to terminate Respondent's parental rights to Josh, John, Nancy, Nate, and Kathy on 16 August 2019 and filed an amended petition to terminate on 16 September 2019. DSS filed another petition to terminate Respondent's parental rights to Fran and Heather on 8 February 2022. A hearing was held 9 August 2022 and 10 August 2022 on DSS' petitions. The district court

entered an order terminating the parental rights of Respondent to her seven children, Josh, John, Nancy, Nate, Kathy, Fran, and Heather on 11 October 2022. Respondent appeals.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Issues

Respondent argues the district court erred in terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(3) (willful failure to support); N.C. Gen. Stat. § 7B-1111(a)(1) (abuse or neglect); and, (3) N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress).

IV. Standard of Review

"The burden in these proceedings is on the petitioner or movant to prove the facts justifying the termination by clear and convincing evidence." N.C. Gen. Stat. § 7B-1111(b) (2021). "We review a trial court's adjudication . . . to determine whether the findings are supported by clear, cogent, and convincing evidence and [whether] the findings support the conclusions of law. The trial court's conclusions of law are reviewable de novo on appeal." *In re K.J.E.*, 378 N.C. 620, 622, 862 S.E.2d 620, 621-22 (2021) (citation omitted).

V. Termination of Parental Rights for Willful Failure to Support

If the trial court properly adjudicates the evidence, makes supported findings

of fact, and concludes at least one statutory ground supports termination: "the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citations and quotation marks omitted). "[A]n adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

A district court may terminate parental rights where "[t]he juvenile has been placed in the custody of a county department of social services . . . , and the parent for a continuous period of six months next preceding the filing of the petition or motion, [has] willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so." N.C. Gen. Stat. § 7B-1111(a)(3) (2021).

The district court found:

> 37. d. [Respondent] was aware that she needed to provide some resources or additional financial support for the juveniles but failed to do so.
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> . . .
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> 63. Grounds exist to terminate the parental rights of [Respondent] . . . , pursuant to N.C.G.S. § 7B-1111(a)(3), given that the juveniles have been placed in the custody of [DSS] and for a continuous period of six months next preceding the filing of this Petition and Respondent . . . ha[s] willfuly [sic] failed to pay reasonable portion of the cost of care for the juveniles although physically and

financially able to do so.

Respondent challenges these findings because the prior permanency planning orders held Respondent was not required to pay child support. ("No child support case has been established. The mother is receiving Supplemental Security Income (SSI) Disability and will not be pursued for child support."). Respondent argues the district court erred in terminating her parental rights for a willful failure to support when she was not under an order to pay child support.

The Supreme Court of North Carolina has recently addressed this argument in the case of *In re S.E.*, holding:

> Respondent-mother's argument she did not know she had to pay a reasonable portion of the cost of care for her children or how to do so is fundamentally without merit. The absence of a court order, notice, or knowledge of a requirement to pay support is not a defense to a parent's obligation to pay reasonable costs, because parents have an inherent duty to support their children.

In re S.E., 373 N.C. 360, 366, 838 S.E.2d 328, 333 (2020) (citations omitted).

Our Supreme Court further addressed N.C. Gen. Stat. § 7B-1111(a)(3)'s "willful" requirement holding: "Given her inherent duty to support her children, respondent cannot hide behind a cloak of ignorance to assert her failure to pay a reasonable portion of the cost of care for her children was not willful." *Id.*

This holding was re-affirmed in *In re D.C.*, 378 N.C. 556, 561-62, 862 S.E.2d 614, 617-18 (2021); and yet again in the case of, *In re J.C.J.*, 381 N.C. 783, 792, 874 S.E.2d 888, 894 (2022). The challenged findings are supported by competent evidence in the

record. Respondent's argument is overruled.

VI. Conclusion

The findings of fact and the trial court's concluding grounds exist to terminate Respondent's parental rights are supported by "clear and convincing evidence" in the record. N.C. Gen. Stat. § 7B-1111(b) (2021). "[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines . . . at least one ground support[s] a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." *In re. E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53-54 (2019) (citation and internal quotation marks omitted).

The trial court's conclusion to terminate Respondent's parental rights to Josh, John, Nancy, Nate, Kathy, Fran, and Heather for Respondent's willful failure to provide any support or to pay a reasonable portion of the cost of their care for more than six months preceding filing or thereafter and the court's best interests determinations are affirmed. *It is so ordered.*

AFFIRMED.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).