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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-784

Filed 2 April 2024

Wake County, Nos. 21 JT 47; 21 JT 48; 21 JT 133

IN THE MATTER OF: M.C.L., C.J.L., J.H.L.

Appeal by respondent-mother from order entered 3 May 2023 by Judge Ashleigh P. Dunston in Wake County District Court. Heard in the Court of Appeals 5 March 2024.

Wake County Attorney's Office, by Mary Boyce Wells, David F. Hord, IV, and Tiffany Campbell, for petitioner-appellee Wake County Health and Human Services.

Amanda Price for Guardian ad Litem.

J. Thomas Diepenbrock for respondent-appellant mother.

THOMPSON, Judge.

Respondent-mother appeals from the trial court's order terminating her parental rights to the minor children M.C.L., C.J.L., and J.H.L.¹ on the grounds of neglect and failure to correct the conditions that led to their removal from her home.

¹ Initials are used to protect the identities of the minor children.

After careful review, we affirm.

I. Factual Background and Procedural History

M.C.L., C.J.L., and J.H.L., born in 2021, 2019, and 2017, respectively, are the biological children of respondent-mother. On 11 March 2021, Wake County Health and Human Services² (WCHHS) filed a juvenile petition alleging that C.J.L. and J.H.L. were neglected juveniles in that they did not receive proper care, supervision, or discipline, and that they lived in an environment injurious to their welfare. By nonsecure custody order entered that same day, C.J.L. and J.H.L. were placed in the nonsecure custody of WCHHS.

On 13 May 2021, an adjudication hearing was held on the juvenile petition in Wake County District Court. By order entered 3 June 2021, C.J.L. and J.H.L. were adjudicated as neglected juveniles pursuant to N.C. Gen. Stat. § 7B-101(15) in that they did not receive proper care or supervision and lived in an environment injurious to their welfare. The order also required respondent-mother to, *inter alia*, complete a domestic violence assessment and domestic violence counseling, refrain from using illegal or impairing substances, and submit to random drug screenings.

M.C.L. was born to respondent-mother on 13 June 2021. On 22 June 2021, WCHHS filed a juvenile petition alleging that M.C.L. was a neglected juvenile in that

² We note that in the juvenile petition, petitioner is referred to as “Wake County Human Services.” However, in the order terminating parental rights, petitioner is referred to as “Wake County Health and Human Services”; therefore, for consistency, we will refer to petitioner as “WCHHS” throughout this opinion, consistent with the order from which appeal is taken.

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he did not receive proper care, supervision, or discipline, and that he lived in an environment injurious to his welfare. The juvenile petition also alleged that M.C.L. was a dependent juvenile in that respondent-mother and respondent-father were unable to provide for M.C.L.'s care and lacked an appropriate alternative childcare arrangement. By nonsecure custody order entered that same day, the court found that M.C.L. was "exposed to a substantial risk of physical injury . . . because the parent[s] . . . ha[d] created conditions likely to cause injury . . . or ha[d] failed to provide . . . adequate supervision or protection[,]" and placed M.C.L. in the nonsecure custody of WCHHS.

An adjudication hearing on the juvenile petition was held on 27 July 2021, and by order entered 30 July 2021, M.C.L. was adjudicated neglected pursuant to N.C. Gen. Stat. § 7B-101(15), and dependent pursuant to N.C. Gen. Stat. § 7B-101(9). In the adjudication order, the court found that on or about 25 April 2021, during her pregnancy with M.C.L., respondent-mother was filmed "injecting herself with an unknown substance into her stomach[,]" and that over a week after his birth, M.C.L. remained in the hospital, under "watch[] for potential withdrawal symptoms due to [respondent-mother]'s Subutex treatment and drug use." Finally, the order required that respondent-mother, *inter alia*, "[r]efrain from use of illegal or impairing substances and submit to random drug screens"

Between April and June 2021, respondent-mother partook in a court-ordered psychological evaluation, which concluded that respondent-mother "acknowledges

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her history of problematic substance use,” and that she had “apparently discontinued her relationship with [respondent-father]” The psychological evaluation recommended respondent-mother continue to receive domestic violence education and counseling, continue participation in a parenting curriculum, continue to participate in Narcotics Anonymous, and maintain suitable housing and income.

In a permanency planning and review order entered 1 September 2021, the court found that as of 19 July 2021, respondent-mother, “ha[d] gone for all drug screens as requested [and] ha[d] tested negative for each screen” The court also found that respondent-mother was, “receiving supportive services related to domestic violence from a local agency[,]” had obtained a “permanent [domestic violence protective order (DVPO)]” against respondent-father on 8 June 2021, and had stated that, “it [wa]s her intention to end the marriage [with respondent-father] and move on with her life with her children separately from [respondent-father].” Based on these findings, the court found that respondent-mother was “making substantial progress within a reasonable period of time under the [case] plan, actively participating in or cooperating with the [case] plan, WCHHS, and the guardian ad litem for the juveniles, [and] ha[d] remained available to the court, WCHHS, and the guardian ad litem”

However, in a subsequent permanency planning order entered 10 February 2022, the court found that respondent-mother’s “behavior ha[d] been somewhat erratic beginning in January 2022 and [respondent-father] reported that

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[respondent-mother] had been visiting him in different hotels” Similarly, in a permanency planning order entered 17 August 2022, the court found that respondent-mother had “missed two drug screens on [7 April 2022] and [13 June 2022] . . . [and] tested positive for [f]entanyl on [25 May 2022].” The order also found that respondent-mother had “let a previous [DVPO] on [respondent-father] expire[,]” and that respondent-mother “ha[d] a history of leaving and returning to [respondent-father].”

In a permanency planning order entered 15 February 2023, the court found, *inter alia*, that respondent-mother “started missing drug screens at the end of September [2022][,]” had not “reported attendance at AA/NA meeting[s] since August 2022[,]” and that at a visit with the children on 28 November 2022, the guardian ad litem “observed [respondent-mother] walking slowly, slurring her words, and appearing as if she w[ere] falling asleep.”

As to her relationship with respondent-father, the court found that respondent-mother “maintain[ed] that she ha[d]n’t seen [respondent-father] in a year and [respondent-father] ha[d] never been to her house.” However, the court found her claims were “not credible based on other evidence presented in court[,]” including, a social worker and the guardian ad litem “observ[ing] a white truck . . . belonging to [respondent-father] . . . at [respondent-mother’s] home in May [2022], twice on [26 July 2022], once on [28 July 2022], and once on [2 August 2022].”

On 7 December 2022, WCHHS filed a motion for termination of respondent-mother’s parental rights to all three minor children. A hearing was held on the motion

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to terminate parental rights on 28 March 2023 in Wake County District Court. By order entered 3 May 2023, the court terminated respondent-mother and respondent-father's parental rights to all three minor children, concluding that grounds existed to terminate their parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)-(2).

In the order terminating respondent-mother's parental rights, the court found that, "[o]ut of thirty[-]four total drug screens, [respondent-]mother missed twelve." The court also found that respondent-mother had "been unable to remain drug free consistently while the children ha[d] been in custody[.]" as she had "regularly tested positive for benzodiazepines" despite "not [being] prescribed benzodiazepines[.]" that she had tested positive for fentanyl on three occasions in 2023, and that a ninety-day hair strand test conducted on 18 January 2023 was positive for "benzodiazepine, fentanyl, norfentanyl, and alprazolam."

As to her relationship with respondent-father, the court found that respondent-father had been "arrested for violating the DVPO in January 2022[.]" and although respondent-mother had told "the social worker she attended court for that criminal matter, [respondent-]mother did not attend court and the case was dismissed." Moreover, the court found that respondent-mother "did not renew the DVPO in June 2022 . . . [de]spite [] telling the court [in July 2022] that she planned to renew the DVPO" The court also found that "the social worker and guardian ad litem observed [respondent-]father's truck parked at [respondent-]mother's apartment complex in late July and August 2022[.]" that on 5 August 2022, WCHHS "received a

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report that [respondents] were together and [respondent-]father had assaulted [respondent-]mother, injuring her head[,]” and that on 8 August 2022, despite being observed “with a large band aid on her forehead . . . [respondent-]mother denied being in contact with [respondent-]father.”

Finally, the court found that after respondent-father “was arrested on [27 November 2022], [respondents] spoke to each other by phone thirty[-]seven times between [14 December] 2022 and [12 January] 202[3].” In the phone calls, respondents “expressed their love for each other, their commitment to each other and the marriage, and concocted plans to deceive the court about where [respondent-]mother was on [27 November] 2022[,]” when respondent-father was arrested for common law robbery and false report of a destructive device.³

Ultimately, the court found that respondents “ha[d] willfully left the children in foster care for over [twelve] months without making reasonable progress to correct the conditions which led to the removal of the child[ren][,]” including exposing the children to “substance abuse by both parents and domestic violence.” Pursuant to these findings, the court concluded as a matter of law that grounds for termination of respondent-mother’s parental rights existed for “neglect . . . pursuant to [N.C. Gen. Stat.] § 7B-1111(a)[(1)]” and “willful failure to show reasonable progress under the circumstances to correct the conditions leading to removal . . . pursuant to [N.C. Gen.

³ Respondent-father pled guilty to the charges against him on 9 March 2023.

Stat. § 7B-1111[(a)](2).” From this order, respondent-mother filed timely written notice of appeal.

II. Discussion

A. Standard of review

“We review a trial court’s adjudication to determine whether the findings are supported by clear, cogent[,] and convincing evidence and the findings support the conclusions of law.” *In re M.R.F.*, 378 N.C. 638, 641, 862 S.E.2d 758, 761 (2021) (citation, internal quotation marks, and brackets omitted). “[W]hether a trial court’s adjudicatory findings of fact support its conclusion of law that grounds existed to terminate parental rights pursuant to [N.C. Gen. Stat.] § 7B-1111(a) is reviewed de novo by the appellate court.” *Id.* at 641, 862 S.E.2d at 761–62 (citation and internal quotation marks omitted). “Under a de novo review, the [C]ourt considers the matter anew and freely substitutes its own judgment for that of the trial court.” *Id.* at 641, 862 S.E.2d at 762 (citation, brackets, and emphasis omitted). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019).

B. N.C. Gen. Stat. § 7B-1111(a)(2)

Respondent-mother contends that “[g]iven [respondent-mother]’s substantial completion of her case plan, neither the trial court’s findings of fact nor clear and convincing evidence support the conclusion that [respondent-mother] willfully left her children in foster care.” We disagree.

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Our courts have “consistently held, a finding by the trial court that any one of the grounds for termination enumerated in [N.C. Gen. Stat.] § 7B-1111(a) exists is sufficient to support a termination order.” *In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311 (2019). A trial court may terminate parental rights to a child pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), provided that:

[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than [twelve] 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.

N.C. Gen. Stat. § 7B-1111(a)(2) (2023).

Our Supreme Court has held that, “[t]ermination under this ground requires the trial court to perform a two-step analysis where it must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months,” and “(2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.” *In re M.B.*, 382 N.C. 82, 88, 876 S.E.2d 260, 266 (2022) (citation omitted). A “trial court [i]s required to make a finding of willfulness to support its termination of respondent’s parental rights under [N.C. Gen. Stat.] § 7B-1111(a)(2)” *Id.* at 88–89, 876 S.E.2d at 266. “The willfulness of a parent’s failure to make reasonable progress toward correcting the conditions that led to a child’s removal from the family home is established when the parent had the

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ability to show reasonable progress, but was unwilling to make the effort.” *Id.* at 88, 876 S.E.2d at 266 (citation omitted). “[T]he conditions of removal contemplated by [N.C. Gen. Stat.] § 7B-1111(a)(2) include *all of the factors* that directly or indirectly contributed to causing the juvenile’s removal from the parental home.” *B.O.A.*, 372 N.C. at 382, 831 S.E.2d at 312 (internal quotation marks omitted) (emphasis added).

On appeal, respondent-mother does not challenge Finding of Fact eleven in the termination of parental rights order, therefore, it is “binding on appeal.” *T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. In Finding of Fact eleven, the trial court found that

[t]he conditions that brought the children into care involved substance abuse by [respondents] and domestic violence. WCHHS had been involved with the family for similar concerns in 2018 and 2016. When [C.J.L.] was born, [respondent-]father became angry that a male doctor was attending [respondent-]mother at birth. [Respondent-father] left the birthing room and sent [respondent-]mother angry messages threatening to kill her and the baby. In February 2021, [respondents] were found passed out in the home with pill bottles and crushed pills near [respondent-]father. [C.J.L. and J.H.L.] were in the home at the time. [Respondent-]father recorded [respondent-]mother injecting herself with an unknown substance during her pregnancy with [M.C.L.]. [Respondent-]father did not call 911 after observing this. [Respondent-]mother filed domestic violence protective orders . . . against [respondent-]father in 2019 and 2021. [Respondent-mother] has a history [of] leaving and returning to [respondent-]father.

Here, the trial court made several additional unchallenged findings of fact, which are therefore binding on appeal, to support its conclusion that respondent-mother had failed to make reasonable progress to correct the conditions which led to

the removal of the minor children in Finding of Fact eleven, including:

17. [Respondent-]mother continues to leave and return to [respondent-]father just as she did before the children came into care. [Respondent-]father was arrested for violating the DVPO in January 2022. In spite of telling the social worker she attended court for that criminal matter, [respondent-]mother did not attend court and the case was dismissed. [Respondent-]mother did not renew the DVPO in June 2022. In spite of telling the court that she planned to renew the DVPO in July, she never did.

18. Both the social worker and guardian ad litem observed [respondent-]father's truck parked at [respondent-]mother's apartment complex in late July and August 2022. On [5 August] 2022, WCHHS received a report that [respondents] were together and [respondent-]father had assaulted [respondent-]mother, injuring her head. On [8 August] 2022, the social worker observed [respondent-]mother with a large band aid on her forehead. [Respondent-]mother denied being in contact with [respondent-]father. [Respondent-]mother was with [respondent-]father in a car during his virtual visit with the children on [27 November] 2022. Both the social worker and the guardian ad litem observed [respondent-]mother on video during the virtual visit; however, [respondent-]mother denies she was with [respondent-]father in the car.

19. [Respondent-]mother visited the children on [28 November] 2022 and her demeanor was noticeably different. She appeared to be in a daze, didn't have an appropriate meal for the children, and was generally not herself. She denied any issues to the visitation coach.

20. After [respondent-]father was arrested on [27 November] 2022, [respondents] spoke to each other by phone thirty[-]seven times between [14 December] 2022 and [12 January] 202[3]. They expressed their love for each other, their commitment to each other and the marriage, and concocted plans to deceive the court about where [respondent-]mother was on [27 November] 2022 and what

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the status of their relationship was. [Respondents] also talked about using controlled substances they purchased online and the effect drugs have had on them in the past.

21. [Respondent-]mother . . . [f]rom June 2021 until February 2023 . . . has regularly tested positive for benzodiazepines. She was not prescribed benzodiazepines. On [4 January] 2023, [respondent-]mother tested positive for fentanyl. On [18 January] 2023 a ninety[-]day hair strand test was positive for benzodiazepine, fentanyl, norfentanyl, and alprazolam. On [10 February] 2023, [respondent-]mother tested positive for fentanyl. On [18 February] 2023, [respondent-]mother tested positive for benzodiazepine. Out of thirty[-]four total drug screens, [respondent-]mother missed twelve. [Respondent-]mother has been unable to remain drug free consistently while the children have been in custody.

Moreover, Finding of Fact thirty-four states that “[respondent-mother] ha[s] willfully left the children in foster care for over [twelve] months without making reasonable progress to correct the conditions which led to the removal of the child[ren].” Finally, Conclusion of Law one states that respondent-mother’s “willful failure to show reasonable progress under the circumstances to correct the conditions leading to removal of the child[ren] and leaving the child[ren] in foster care for more than [twelve] months pursuant to” N.C. Gen. Stat. § 7B-1111(a)(2), “warrant[ed] a determination that grounds exist for the termination of parental rights”

Indeed, the fact that in September 2021, the trial court found that respondent-mother was “making substantial progress within a reasonable period of time under the [case] plan, actively participating in or cooperating with the [case] plan, WCHHS, and the guardian ad litem for the juveniles, [and] ha[d] remained available to the

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court, WCHHS, and the guardian ad litem[.]” contrasted with her declined efforts in making reasonable progress, and the reality of respondent-mother’s reversion to a relationship plagued by substance abuse and domestic violence, demonstrate respondent-mother’s willful failure to correct the conditions that led to the removal of her children. Respondent-mother “had the ability to show reasonable progress, but was unwilling to make the effort.” *M.B.*, 382 N.C. at 88, 876 S.E.2d at 266.

Upon our careful review of the record, we are satisfied that the trial court’s conclusion of law that grounds existed to terminate respondent-mother’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) was supported by clear, cogent, and convincing evidence. For this reason, we conclude that the trial court did not err in terminating respondent-mother’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Finally, because “an adjudication of any single ground for terminating a parent’s rights under [N.C. Gen. Stat.] § 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), we decline to address respondent-mother’s remaining argument on appeal.

III. Conclusion

We conclude that the trial court’s conclusion of law that grounds existed to terminate respondent-mother’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) was supported by clear, cogent, and convincing evidence. For the aforementioned reason, the order terminating respondent-mother’s parental rights is

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affirmed.

AFFIRMED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).