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NO. COA11-768
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

IN THE MATTER OF:

M.H., a Minor Child. Person County
No. 09 JT 61

Appeal by respondent-father from order entered 28 March 2011 by Judge Mike Gentry in Person County District Court. Heard in the Court of Appeals 28 November 2011.

No brief filed for petitioner-appellee Person County Department of Social Services.

Duncan B. McCormick for respondent-appellant father.

Pamela Newell for the guardian ad litem.

HUNTER, JR., Robert N., Judge.

H.H. ("respondent") appeals from an order terminating his parental rights to his minor child, M.H. ("the juvenile"). Because respondent's failure to comply with the terms of his case service plan constitutes willful failure to make reasonable progress to correct the conditions which led to the removal of the juvenile from his custody, we affirm.

The juvenile was born severely premature in January 2007 and remained in the hospital for several months after birth. As a result of his premature birth, the juvenile has significant developmental delays and requires feeding through a gastric tube. On 8 July 2009, the juvenile was admitted to the hospital and was diagnosed with "failure to thrive." While the juvenile was in the hospital, respondent was arrested for writing worthless checks.

On 15 July 2009, the Person County Department of Social Services ("DSS") filed a juvenile petition alleging the juvenile was neglected and dependent, and obtained nonsecure custody of the juvenile. After a hearing on 24 August 2009, the trial court entered an adjudication and disposition order concluding the juvenile was a neglected and dependent juvenile. The court continued custody of the juvenile with DSS and ordered respondent to cooperate with DSS and establish a case service plan regarding the juvenile. The court further ordered respondent to submit to random drug screening.

By order entered 24 August 2010, the trial court changed the permanent plan for the juvenile from reunification to adoption. The court found respondent had rarely visited the juvenile and had refused direct contact with the DSS social

worker. The court also found that respondent had disagreed with the treatment recommendations for the juvenile made by both DSS and the juvenile's physicians.

DSS filed a motion to terminate respondent's parental rights on 5 October 2010. After a hearing on 24, 26 and 28 January 2011, the trial court entered an order terminating respondent's parental rights to the juvenile. The court found grounds to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress to correct the conditions that led to the removal of the juvenile). Respondent timely filed a notice of appeal with this Court on 5 April 2011.

Respondent argues the trial court erred in concluding that he failed to correct the conditions that led to the removal of the juvenile from his care. Respondent argues that the specific conditions that led to the juvenile's removal from his care were that (1) respondent was in jail, (2) the child had been hospitalized due to his failure to thrive, and (3) respondent had not followed the doctor's instructions as to feeding the juvenile. Respondent contends that he was out of jail at the time of the hearing, that the juvenile had considerably improved

during the pendency of the juvenile case, and thus he has corrected the conditions which led to the removal of the juvenile from his care. Respondent further contends that his failure to comply with the case service plan does not support the trial court's conclusion that he willfully failed to make reasonable progress to correct the conditions that led to the juvenile's removal from his care. Respondent's arguments are misplaced.

"The standard for review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). The trial court's findings of fact which an appellant does not specifically dispute on appeal "are deemed to be supported by sufficient evidence and are binding on appeal." *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). However, "[t]he trial court's conclusions of law are 'fully reviewable *de novo* by the appellate court.'" *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation omitted).

Grounds exist for termination of parental rights when:

The 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. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2009). "Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort." *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001).

Here, the trial court made the following relevant findings in support of its conclusion that grounds existed to terminate respondent's parental rights based on his willful failure to make reasonable progress to correct the conditions which led to the removal of the juvenile from his care:

15. Ms. Love[, the DSS social worker for the juvenile,] made contact early in this case with [respondent] with respect to establishing a case plan;

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17. [Respondent] did not wish to discuss a case plan with her, and he informed Ms. Love to put into the proposed plan what she thought was important, and send same to his attorney;

18. Petitioner introduced, without objection, Exhibit #1, identified by Ms. Love as the proposed case plan she prepared

for [Respondent];

19. [Respondent] testified in Court that he had never seen [his case plan] in the eighteen months this case has been pending;

20. . . . [T]he proposed case plan had four major components, to wit: referral of the father for psychological evaluation, referral of the father for a parenting program, referral for a substance abuse evaluation and having the father participate in a Court ordered visitation plan;

21. Ms. Love chose to recommend those activities due to being aware of the father's history of depression, and receiving information as to his usage of recreational drugs from the investigative social worker;

22. The social worker chose the parenting program aspect because of the child's medical diagnosis of 'failure to thrive', and the Court's findings that the father regularly disagreed with the child's treating physicians as to medical issues and feeding;

. . . .

24. The social worker chose the activities with respect to a visitation plan in order to assess the father's ability to learn how to care for his child, and for her to assess the child's relationship with the father;

. . . .

28. Initially, DSS worked to get the father to meet with the foster mother to be assisted in nutritional education and proper care for the child's condition;

29. The instructional settings did not go well, and they were suspended;

. . . .

33. DSS made weekly visitation with the child available to the father, but he chose not to attend all those visits;

. . . .

39. [Respondent] has not shown that he has a reasonable residence in which to care for his child;

. . . .

43. The father never attended a substance abuse evaluation;

44. The father did attend a number of drug screens, which access both his urine and his hair follicles;

45. A significant number of those tests show the father positive for some controlled substance including: cocaine, benzodiazepine, oxycontin, oxycodone, extended opiates and other substances . . . ;

46. The father was not always positive for all of these substances but he was usually positive for some;

. . . .

49. The father testified on this date that he has had medical issues that required prescription medications and that he had prescriptions for such medications, but he did not produce same in Court on this date;

50. [Respondent] also testified that the only reason he could think of for having a

positive test for cocaine was that such substance was in the medicines he was taking;

51. The father was requested to submit to a psychological evaluation;

52. He declined to participate at the request of Ms. Love, responding to her that 'I am not crazy';

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54. The father declined to participate in a parenting program; . . .

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65. The father declined to engage in reunification efforts with Person County DSS;

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77. The father has not done what he needs to do in order to have his child returned to him;

78. [Respondent] had a family services road map (Out of Home Family Services Agreement) laid out for him by DSS, and he has not followed that;

79. The father has not been cooperative with Ms. Love;

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117. [The juvenile] has spent over eighteen months in foster care, due to the father's inactions as documented in the case file, as well as in this Order.

Respondent does not contest any of the trial court's findings of fact, and they are thus binding upon this Court on appeal. We conclude the trial court's findings of fact support its conclusion that grounds exist to terminate respondent's parental rights in that respondent willfully left the juvenile in a placement outside the home for more than twelve months without showing to the satisfaction of the court that he made reasonable progress under the circumstances toward correcting those conditions which led to the removal of the juvenile from respondent's care.

Respondent's contention that his failure to comply with the case service plan does not support the trial court's conclusion that he willfully failed to make reasonable progress to correct the conditions that led to the juvenile's removal from his care is without merit. This Court has held that "'a respondent's prolonged inability to improve [his] situation, despite some efforts in that direction, will support a finding of willfulness regardless of [his] good intentions,' and will support a finding of lack of progress during the year preceding the DSS petition sufficient to warrant termination of parental rights under section 7B-1111(a)(2)." *In re J.W.*, 173 N.C. App. 450, 465-66, 619 S.E.2d 534, 545 (2005) (quoting *In re B.S.D.S.*, 163 N.C.

App. 540, 546, 594 S.E.2d 89, 93 (2004)). The components of respondent's case service plan were all designed to ensure that should the juvenile be returned to respondent's custody, the juvenile would not be subjected to any potential condition that might again cause him to return to the hospital for failing to thrive. Moreover, DSS alleged in the initial juvenile petition that respondent had been having problems with depression for months, and first learned of respondent's possible substance abuse problems after a drug test on 13 August 2009. Accordingly, we hold respondent's failure to make any progress toward compliance with his case service plan supports the trial court's conclusion that he willfully failed to make reasonable progress to correct the conditions which led to the removal of the juvenile from his care.

Because we hold the trial court did not err in concluding grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), we do not address respondent's arguments regarding the court's conclusion that grounds also existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(1). *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) ("[W]here 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.'" (citation omitted)). Accordingly, we affirm the trial court's order terminating respondent's parental rights to the juvenile, M.H.

Affirmed.

Judges STEELMAN and GEER concur.

Report per Rule 30(e).