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NO. COA12-151
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

IN THE MATTER OF:

J.L.B.B.

Rutherford County
No. 10 JT 56

Appeal by respondent from order entered 7 December 2011 by Judge Laura Powell in Rutherford County District Court. Heard in the Court of Appeals 12 June 2012.

King Law Offices, PLLC, by John B. Crotts, for petitioner-appellee Rutherford County Department of Social Services.

Pamela Newell, for appellee Guardian ad Litem.

Staples Hughes, Appellate Defender, by Annick Lenoir-Peek, Assistant Appellate Defender, for respondent-appellant mother.

MARTIN, Chief Judge.

Respondent ("mother") appeals from an order terminating her parental rights to her son, J.L.B.B. ("Julian"). We affirm.

Julian was born to mother in November 2007. In May 2010, the Rutherford County Department of Social Services ("DSS") received a report that mother did not pick up Julian from

daycare because she had been arrested for assault and battery and was "highly impaired and unable to answer questions" at the time. DSS placed Julian in a foster home that had "specialized training" to "better meet [Julian's] special needs," which included significantly delayed speech development, gross and fine motor skills delays, a feeding disorder, and an eye disorder.

On 6 July 2010, the trial court adjudicated Julian a neglected and dependent juvenile. In its order, the trial court found that mother admitted to "huffing paint," smoking marijuana, and not taking her medications for mental health issues. Mother entered into a case plan that required her to address her mental health and substance abuse issues and to work with service providers "to show that she is able to effectively manage [Julian's] special needs and challenging behaviors."

In September 2011, DSS filed a petition to terminate mother's parental rights under N.C.G.S. § 7B-1111(a)(2). After a hearing on the matter, on 7 December 2011, the trial court entered an order concluding that grounds existed to terminate mother's parental rights under N.C.G.S. § 7B-1111(a)(2) and (a)(7). The court then concluded that it was in the best interest of the child to terminate mother's parental rights. Mother appeals.

Mother first contends DSS's petition did not put her on notice as to how she failed to make progress in correcting the conditions that led to the removal of Julian. We disagree.

N.C.G.S. § 7B-1104(6) provides that a petition for termination of parental rights shall state "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6) (2011). Although the factual allegations in such a petition need not be "exhaustive or extensive," they must "put a party on notice as to what acts, omissions or conditions are at issue." *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002). Moreover, in order to meet the statutory requirements, "sufficiently detailed allegations need not appear on the face of the petition but *may be incorporated by reference*." *See In re H.T.*, 180 N.C. App. 611, 617, 637 S.E.2d 923, 927 (2006) (emphasis added).

In the present case, DSS's petition alleged:

5. The petitioner is informed and believes that there exist one or more grounds for termination of the parental rights of the respondent mother [] to the minor child, [Julian] including the following:

- a. [N.C.G.S.] § 7B-1111(a) (2) in that:

- i. The parents have 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.

Although the above allegation would constitute a "bare recitation" of the statute and, standing alone, would be insufficient to meet the statutory requirement as set forth above, *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160, *appeal dismissed*, 332 N.C. 483, 424 S.E.2d 397 (1992). Paragraph 1 of the petition further provides that a copy of the order adjudicating Julian neglected and dependent "is attached hereto as Exhibit 'A' to the petition and incorporated herein by reference." In this underlying order, the court found:

6. DSS became involved with the child on May 14, 2010 due to a report that the mother had been arrested for assault and battery and the child was at daycare with no other arrangements for pick up. [Mother] was highly impaired and unable to answer questions.

. . . .

9. [Mother] admits to huffing paint and smoking marijuana and also admitted she is no longer taking her medications for mental health issues. She is currently receiving disability.

10. [Mother] has been referred for parenting classes through Family Resources of Rutherford County. She maybe [sic] able to learn parenting techniques in these sessions [sic] [I]t is unknown whether she will be able to learn effective methods to use with her special needs child in this venue. Her case plan asks her to address her mental health and substance abuse[] issues and to work with the various service providers to show that she is able to effectively manage his special needs and challenging behaviors.

Thus, because the order adjudicating Julian as neglected and dependent alleged sufficient facts—including mother's mental health and substance abuse issues—to put her on notice of the acts, omissions, or conditions that led to Julian's removal, *see In re Quevedo*, 106 N.C. App. at 579, 419 S.E.2d at 160 ("[T]he petition incorporates an attached custody award, . . . and the custody award states sufficient facts to warrant such a determination [that grounds exist to warrant termination of parental rights]."), we hold that DSS's petition complied with the requirements of N.C.G.S. § 7B-1104(6). Therefore, we overrule this issue on appeal.

Mother next contends the trial court erred by concluding that grounds existed to terminate her parental rights pursuant to N.C.G.S. § 7B-1111(a)(2) because the court's findings of fact were not based on the evidence in the record, and the findings did not support the court's conclusion. *See In re Allred*,

122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996) ("In a termination proceeding, the appellate court should affirm the trial court where the court's findings of fact are based upon clear, cogent and convincing evidence and the findings support the conclusions of law."). Again, we disagree.

Under N.C.G.S. § 7B-1111(a)(2), a court may terminate parental rights on the ground 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." N.C. Gen. Stat. § 7B-1111(a)(2) (2011). The willful leaving of the child is "something less than willful abandonment," as described in N.C.G.S. § 7B-1111(a)(7), and "does not require a showing of fault by the parent." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). Moreover, "willfulness is not precluded just because respondent has made some efforts to regain custody of the child," *id.* at 440 (citing *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995)); willfulness may be found where a "respondent left her minor child in foster care, for over twelve months, without showing reasonable progress or a positive response toward the diligent efforts of DSS." *Id.*

Here, in order to support its conclusion that mother willfully left Julian in foster care for more than 12 months without making reasonable progress under the circumstances, the trial court made the following finding of fact:

10. The Court finds that there was a case plan entered into by the respondent mother and she has failed to complete her case plan in that, among other things, has recently admitted to substance use, refused drug testing, has expressed suicidal ideation, and is facing eviction. She is not currently []compliant with mental health services.

A review of the record and transcript shows that Finding of Fact 10 is based upon competent evidence. Social worker Andrea Denning testified that mother's case plan involved mother following through with a mental health evaluation, obtaining a substance abuse evaluation and submitting to random drug screens, and maintaining an appropriate home. Ms. Denning testified that mother was compliant with her mental health services until June 2011 when mother expressed suicidal ideation and did not follow through with individual counseling. Ms. Denning further testified that mother refused drug testing in both May and June 2011. Ms. Denning also testified that mother had not been able to maintain an appropriate home for Julian; that sheriff's deputies found Julian walking down the middle of the road about an eighth of a mile from mother's home during an

unsupervised visit in April 2011; and that mother was evicted from her home in June 2011. Accordingly, we conclude Finding of Fact 10 is supported by clear, cogent, and convincing evidence and that this finding supports the trial court's conclusion that a ground existed under N.C.G.S. § 7B-1111(a)(2) to terminate mother's parental rights.

Mother alternatively contends the trial court erred by terminating her parental rights under N.C.G.S. § 7B-1111(a)(7) because DSS did not allege that mother abandoned Julian in its termination petition; therefore, mother asserts that she did not have notice of this ground as a basis for the termination of her rights. Since this ground was not alleged in DSS's petition, we agree with mother that abandonment may not be used as a ground for terminating her parental rights. See *In re C.W.*, 182 N.C. App. 214, 228-29, 641 S.E.2d 725, 735 (2007) ("Because it is undisputed that DSS did not allege abandonment as a ground for termination of parental rights, [the] respondent had no notice that abandonment would be at issue during the termination hearing[, and] . . . the trial court erred by terminating [the] respondent's parental rights based on this ground."). Nevertheless, "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) (internal quotation marks omitted), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). Thus, since we have already concluded that there were sufficient grounds under N.C.G.S. § 7B-1111(a)(2) to terminate mother's parental rights, we need not address this issue on appeal further.

Mother next contends the trial court abused its discretion by concluding that the termination of her parental rights was in Julian's best interest.

In determining whether terminating a parent's rights is in the juvenile's best interest, the court shall consider the following:

- (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) (2011). So long as it is apparent that "the trial court's findings are not so deficient as to warrant a conclusion that its determination is manifestly unsupported by reason," a trial court does not abuse its discretion by omitting a finding on a statutory factor. *See, e.g., In re S.C.H.*, 199 N.C. App. 658, 668, 682 S.E.2d 469, 475 (2009) (holding that the trial court did not abuse its discretion where there was no specific finding regarding the bond between the parent and the child, but it was clear that the trial court had considered the factor), *aff'd per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010); *see also In re S.R.*, 207 N.C. App. 102, 111, 698 S.E.2d 535, 542, *disc. review denied*, 364 N.C. 620, 705 S.E.2d 371 (2010) (affirming an order terminating parental rights where the trial court "did not make specific findings regarding the bond between respondent-mother and the juveniles and the bond between the foster parents and the juveniles," but there was "evidence in the record [that] demonstrate[d] that the trial court considered these factors in making its dispositional decision").

In the present case, the trial court found as follows:

6. The name of the child as it appears on the child's birth certificate is [Julian] born [] November, 2007[.]

. . . .

12. There is currently no bond between the minor child and the respondent mother.

. . . .

14. The conduct of the respondent mother, as alleged above, demonstrates that said respondent mother will not promote the child's physical and emotional well-being.

15. The minor child is in need of permanent plan of care at the earliest possible age, and this can be accomplished only by the severing of the relationship of the child to the respondent mother, and by the termination of the parental rights of said respondent mother.

. . . .

17. The minor child is appropriately placed in foster care and is doing well in said placement. The current plan for the minor child is guardianship or adoption.

Nevertheless, mother asserts that the trial court erred because it failed to consider the second and fifth factors of N.C.G.S. § 7B-1110(a) and failed to consider Julian's health issues, which should have been a "relevant consideration" under the sixth factor of N.C.G.S. § 7B-1110(a). However, in its Finding of Fact 18, the court accepted into evidence and incorporated into its order the contents of the guardian ad litem ("GAL") report, which addressed the second and fifth "best interest" factors by stating that the likelihood of adoption is "[v]ery

likely" and that, although Julian had a positive relationship with his foster family, the family was not considering adopting Julian. Additionally, with respect to Julian's health issues and special needs, the court heard testimony from Ms. Denning, as mentioned above. Thus, the record before us reflects that the trial court considered each of the statutory factors required under N.C.G.S. § 7B-1110(a). While "the better practice is for trial courts to make specific findings related to the factors listed in [N.C.G.S. §]7B-1110(a) in orders terminating parental rights," *see In re S.R.*, 207 N.C. App. at 112, 698 S.E.2d at 542, we conclude that the court adequately considered these factors. Accordingly, we hold that the trial court did not abuse its discretion by determining that it is in Julian's best interests to terminate mother's parental rights.

Finally, mother contends the trial court's order should be reversed because she was denied effective assistance of counsel. Mother argues that counsel's performance was deficient because counsel failed to: adequately prepare for the hearing; move to dismiss the petition for failure to state a claim; request a continuance when mother was not present at the beginning of the hearing; object to the social worker's testimony; object to improper notice; and review the written order.

Pursuant to N.C.G.S. §§ 7B-1101.1(a) and 7B-1109(b),

parents have a "right to counsel in all proceedings dedicated to the termination of parental rights.'" *In re S.N.W.*, 204 N.C. App. 556, 559, 698 S.E.2d 76, 78 (2010) (quoting *In re L.C.*, 181 N.C. App. 278, 282, 638 S.E.2d 638, 641, *disc. review denied*, 361 N.C. 354, 646 S.E.2d 114 (2007)). "This statutory right includes the right to effective assistance of counsel." *In re Dj.L.*, 184 N.C. App. 76, 84, 646 S.E.2d 134, 140 (2007). "To prevail in a claim for ineffective assistance of counsel, respondent must show: (1) her counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) her attorney's performance was so deficient she was denied a fair hearing." *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005).

Here, while mother lists several purported deficiencies on the part of her counsel, she fails to present legal arguments to support her claims of ineffective assistance of counsel and does not explain how the court's decision would have been affected had counsel performed differently. For example, mother claims that counsel was not adequately prepared for the hearing and failed to move to dismiss the petition or to move for a continuance. Yet mother does not provide legal argument as to why these omissions undermined the entire hearing to such an extent as to make it unfair. Moreover, the scant cases that

mother purports to use as support for her assertions have such grossly different fact patterns from the issue at hand that they are easily distinguishable and fail to provide any force of persuasion. Accordingly, we conclude that mother's assertions have not convinced us that her counsel performed below an objective standard of reasonableness. Because "[i]t is not the duty of this Court to supplement an appellant's brief with legal authority or arguments not contained therein," *see Goodson v. P.H. Glatfelter Co.*, 171 N.C. App. 596, 606, 615 S.E.2d 350, 358, *supersedeas and disc. review denied*, 360 N.C. 63, 623 S.E.2d 582 (2005); *see also* N.C.R. App. P. 28(a), we overrule this issue on appeal.

Affirmed.

Judges HUNTER and STEPHENS concur.

Report per Rule 30(e).