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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-692

Filed: 15 December 2015

Forsyth County, No. 11 JT 73

IN THE MATTER OF: O.M.

Appeal by respondent-mother from order entered 6 March 2015 by Judge Lisa Menefee in Forsyth County District Court. Heard in the Court of Appeals 9 November 2015.

*Assistant County Attorney Theresa A. Boucher for petitioner-appellee Forsyth County Department of Social Services.*

*W. Michael Spivey for respondent-appellant mother.*

*Womble Carlyle Sandridge & Rice, LLP, by Reid C. Adams, Jr. and Loryn A. Buckner, for guardian ad litem.*

CALABRIA, Judge.

Respondent-mother (“respondent”) appeals from the trial court’s order terminating her parental rights to her minor child O.M. (“Olive”).<sup>1</sup> We affirm.

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<sup>1</sup> We use a pseudonym to protect the juvenile’s privacy and for ease of reading.

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On 19 July 2013, the Forsyth County Department of Social Services (“DSS”) received a report alleging that the Winston-Salem Police Department responded to a call at Little Snuggles Daycare because two-year-old Olive had not been picked up from daycare. When respondent was located by law enforcement, she was uncooperative and was charged with child abandonment. DSS obtained non-secure custody of Olive and filed a petition alleging she was a neglected and dependent juvenile.

After a hearing on 4 September 2013, the trial court entered an order adjudicating Olive to be a dependent juvenile and continued custody of Olive with DSS. The trial court further directed respondent to: (1) enter into a service agreement with DSS; (2) enter into a visitation agreement with DSS, timely arrive for her visitations, and give prior notice if she needed to cancel a visit; (3) complete a substance abuse assessment and follow all recommendations; (4) complete a mental health assessment and follow all recommendations; and (5) inform DSS of her address and maintain bi-weekly contact with DSS. The trial court gave Jose Santos Hernandez, the putative father, an opportunity to have paternity testing. However, he did not take advantage of this opportunity and did not appear for the 30 October 2013 review hearing. After respondent failed to comply with her court-ordered case plan, the trial court relieved DSS from further reunification efforts, set the

permanent plan for Olive as adoption, and directed DSS to file a petition to terminate respondent's parental rights.

On 23 June 2014, DSS filed a petition to terminate respondent's parental rights to Olive, alleging the grounds of neglect, failure to make reasonable progress to correct the conditions that led to the removal of Olive from her care, dependency, and the previous termination of her parental rights to another child. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6), (9) (2013). After a hearing on 6 February 2015, the trial court entered an order on 6 March 2015 concluding that all four grounds existed to terminate respondent's parental rights and that termination of respondent's parental rights was in Olive's best interests. Respondent filed notice of appeal.

As an initial matter, respondent's appellate counsel has filed a no-merit brief on respondent's behalf. Counsel states that he has conducted a conscientious and thorough review of the record on appeal and concludes that this appeal presents "no issue of merit on which to base an argument for relief and that this appeal is frivolous." Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), counsel requests that this Court conduct an independent examination of the case.

Counsel wrote respondent a letter on 10 July 2015 advising her of her right to file *pro se* arguments directly with this Court within thirty days of the date of the filing of the no-merit brief, in accordance with Rule 3.1(d). Counsel attached to the

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letter a copy of the record, the transcript, and the no-merit brief filed by counsel. Respondent has not filed her own written arguments with this Court.

“As a respondent’s prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness ‘regardless of her good intentions,’ there was sufficient evidence to support the trial court’s finding of respondent’s lack of progress during the year preceding the DSS petition to warrant termination of her parental rights under N.C. Gen. Stat. § 7B-1111[.]” *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004) (quoting *In re Bishop*, 92 N.C. App. 662, 669-70, 375 S.E.2d 676, 681 (1989) (holding the trial court’s findings were supported by clear, cogent, and convincing evidence where “although respondent ha[d] made some progress in the areas of job and parenting skills, such progress ha[d] been extremely limited”)).

The trial court’s order includes sufficient findings of fact that respondent neglected Olive and willfully left the child 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 within 12 months in correcting those conditions which led to the removal of the child. The trial court further found that respondent is incapable of providing for the proper care and supervision of Olive and there is a reasonable probability that such incapability will continue for the foreseeable future.

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Moreover, the trial court made appropriate findings on each of the relevant dispositional factors and did not abuse its discretion in concluding it is in Olive's best interests to terminate respondent's parental rights. *See* N.C. Gen. Stat. § 7B-1110(a) (2013). Accordingly, we affirm the trial court's order terminating respondent's parental rights to Olive and hold the trial court's findings are supported by clear, cogent, and convincing evidence.

AFFIRMED.

Judges STROUD and DAVIS concur.

Report per Rule 30(e).