

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-373

Filed: 15 December 2015

Henderson County, No. 06 JT 37

IN THE MATTER OF: J.C.B.

Appeal by respondent-mother from orders entered 10 December 2014 by Judge Athena F. Brooks in Henderson County District Court. Heard in the Court of Appeals 9 November 2015.

Deputy County Attorney Rebekah R. Price, for petitioner-appellee Henderson County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by Teadra Pugh, for Guardian ad Litem.

Peter Wood, for respondent-appellant mother.

CALABRIA, Judge.

Respondent-mother (“respondent”) appeals from the trial court’s orders terminating her parental rights to the minor child “Jim”¹ on the ground that she willfully left Jim in placement outside the home for more than twelve months without

¹ A pseudonym is used to protect the identity of the minor child.

showing reasonable progress in correcting the conditions which led to Jim's removal.²

We affirm.

On 18 August 2011, the Henderson County Department of Social Services ("DSS") filed a petition alleging that Jim was a neglected and dependent juvenile. DSS obtained nonsecure custody the same day. On 14 November 2011, Jim was adjudicated neglected. The court found that respondent had left Jim with her stepdaughter, who contacted DSS and informed them she could no longer care for Jim. The court further found that respondent attempted to have Jim, who had special needs, committed in Pardee Hospital and that she failed to provide Jim with his prescribed medications. In its disposition order, the trial court placed twenty requirements on respondent-mother in order to achieve reunification. These requirements included having respondent undergo a complete psychological assessment, follow the recommendations from that assessment, and demonstrate that she benefited from her mental health treatment.

On 2 November 2011, respondent obtained a psychological assessment from Dr. Laura Greenlee ("Dr. Greenlee") and received treatment recommendations, which included participation in individual trauma treatment and additional psychological assessments. On 27 January 2012, respondent obtained an assessment from licensed

² Jim's father is deceased.

psychologist Dr. Jill Nicolino (“Dr. Nicolino”) and received additional treatment recommendations, including participation in long-term intensive psychotherapy.

On 10 October 2013, the trial court entered a permanency planning review order which found respondent had either failed to comply with her treatment recommendations or failed to demonstrate benefits from the treatments that she had obtained. The court changed the permanent plan for Jim from reunification to adoption and ordered DSS to make reasonable efforts to facilitate that plan.

On 18 October 2013, DSS filed a petition to terminate respondent’s parental rights to Jim on the grounds of neglect and failure to make reasonable progress. After a hearing, the trial court entered adjudication and disposition orders on 10 December 2014 terminating respondent’s parental rights solely on the ground of failure to make reasonable progress. Respondent appeals.

Respondent argues that the trial court erred by concluding that her parental rights were subject to termination on the ground that she willfully left Jim in foster care for more than twelve months without showing reasonable progress in correcting the conditions that led to his removal. She contends that, given her mental illnesses, she made reasonable progress toward correcting the conditions that caused Jim’s removal. We disagree.

“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). “If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court.” *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (internal quotation marks and citations omitted). “A finding that any one of the grounds for the termination of a parent’s parental rights in a juvenile enumerated in N.C. Gen. Stat. § 7B-1111 existed is sufficient to support a decision to terminate that parent’s parental rights.” *In re M.D.*, 200 N.C. App. 35, 40, 682 S.E.2d 780, 783 (2009).

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), a court may terminate parental rights when “[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) (2013).

A finding of willfulness here does not require proof of parental fault. On the contrary, [w]illfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort. A finding of willfulness is not precluded even if the respondent has made *some* efforts to regain custody of [her child].

In re A.W., ___ N.C. App. ___, ___, 765 S.E.2d 111, 115 (2014) (internal quotation marks and citations omitted). “This standard operates as a safeguard for children. If parents were not required to show both positive efforts and positive results, ‘a parent

could forestall termination proceedings indefinitely by making sporadic efforts for that purpose.’ ” *In re B.S.D.S.*, 163 N.C. App. 540, 545, 594 S.E.2d 89, 93 (2004) (quoting *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995)).

In this case, the trial court made the following unchallenged findings of fact:

15. As part of her mental health treatment, Mother was to participate in Individual Trauma Treatment. Mother participated in individual therapy from September 2011 to March 2012 and then started therapy once more with Carrie Didlake; however, this therapy is not trauma-based therapy and does not address the mother’s childhood trauma or Post-Traumatic Stress diagnosis as recommended in her mental health assessment. Additionally, Mother has not addressed her personality disorder diagnosis through treatment.

...

17. As part of her mental health treatment, Mother was to receive a neurological assessment. Mother did not do this for over a year and a half and has only recently obtained a brain scan.

...

19. As part of [Dr. Nicolino]’s recommendations, Mother was to engage in Long-Term Intensive Interpersonal Psychotherapy. Mother has not started psychotherapy to address her mental health diagnoses of Personality Disorder and Adjustment Disorder. She has participated in mental health counseling addressing coping skills for anxiety.

20. As part of [Dr. Nicolino]’s recommendations, Mother was to participate in Intensive In-Home treatment. Mother did this from October 2011 through February 2012. NC Mentor worked with the mother to teach appropriate

activities and skills to use during visits to address the juvenile's behavior and special needs. Mother would try to use the suggested activities, but did not seem to understand their purpose or the boundaries that accompanied those activities. She would forget from one session to the next what expectations were appropriate for a child of [Jim]'s age. NC Mentor had concerns about the mother's understanding of and ability to address the juvenile's special needs, as he has been diagnosed with Pervasive Developmental Disorder and is on the Autism spectrum. Nicole Toto from NC Mentor also stated her concerns that the juvenile needs a safe, secure, consistent and structured environment with clear limits and boundaries, clear and consistent routines and rituals, and must be carefully prepared for any transitions or change in routine and the mother was unable to provide this environment for the juvenile during her visitations with the juvenile.

21. Mother was ordered to complete parenting classes and demonstrate the ability to identify age appropriate behavior, needs and discipline for the juvenile. Prior to the juvenile coming into custody, Mother reported that she completed 12 parenting classes designed to teach skills and techniques specific to parenting a child with the juvenile's special needs. Yet the mother could not handle the juvenile and his behaviors and attempted to have the juvenile involuntarily committed. On November 2, 2011[,] a large oar was given to HCDSS and it was reported that the mother had used the oar on the juvenile and his sibling leaving bruises. The mother was confronted about the physical discipline and denied the use of such on the juvenile; however, when Nicole Toto from NC Mentor met with the mother, she stated that "in having a child like [Jim], there was no other choice but to use physical discipline because of his behaviors." This conversation occurred after the mother's completion of a second round of parenting courses that specifically addressed alternatives to physical discipline. After the mother completed one on one parenting skills coaching from NC Mentor and

Opinion of the Court

additional parenting classes, both the NC Mentor team and the parenting instructor had concerns about the mother's ability to apply the skills in the course to her parenting of the juvenile.

22. Mother was to demonstrate benefit from the mental health treatment and from her parenting classes. While the mother has attended and completed a large number of courses and obtained the requested assessments and evaluations, she has not made significant progress nor shown benefit from the course on the areas of concern with her mental health and parenting skills.

23. [Dr. Greenlee] performed both an initial Comprehensive Clinical Assessment on the mother in September 2011 and a year later on October 19, 2012. She had major concerns about the mother's ability to provide a safe and structured environment for the juvenile and to address his special needs. Even after all of the parenting courses and work with NC Mentor, Mother could not identify the juvenile's special needs and interact with the juvenile in a way that addressed those needs.

...

32. It has been over three years since the juvenile was removed from the mother's custody and care and, while she has made some progress on her plan, she has not finished her entire plan nor has she corrected the conditions that led to the need for the removal of the juvenile from her home.

33. Mother has been unable to put into practice consistently the things that she has been taught in her classes. Mother did not apply the concepts learned in her classes and training to her visitations with the juvenile.

34. Mother does not understand the needs of the juvenile nor has she demonstrated an understanding of the juvenile's needs in her interactions with the juvenile.

35. While Mother received numerous assessments and attended treatment, she attended no treatment to address the diagnosis of possible Personality disorder. She did not and still does not understand the necessity of excluding possible concerns stemming from her mental health issues and diagnoses through treatment.

Respondent contends that these findings demonstrate that she made significant progress on her case plan and that any further progress was impossible due to her mental health issues, which she claims were untreatable.

We first note that respondent's argument that more progress was impossible because her mental illness is untreatable was not the argument she presented at the trial of this matter, which was heard over a series of days from June until September of 2014. Instead, her evidence and her argument at trial was consistently that she had done most of the mental health treatment required by the trial court, that she had in fact made progress, and that she would continue to improve so that she could regain custody. For example, her counsel argued that

[t]he Court said do all this stuff and she did it. And through going to Dr. Greenlee or through going to Dr. Nicolette, somehow she ends up with Dr. Joseph. And Dr. Joseph examines her and puts her on some medication and all of sudden things start clicking in her life. Before all that, she was still going to her classes. Still doing everything she was supposed to do. Still doing her volunteer work. No vehicle, but doing everything she was supposed [sic] because she wanted her child back. And she would do anything she testified.

It is true that the evidence indicated that respondent's mental health conditions were

difficult to treat, but none of the evidence demonstrated that respondent's mental health conditions were untreatable and that further progress would be impossible. Our Supreme Court "has long held that where a theory argued on appeal was not raised before the trial court, 'the law does not permit parties to swap horses between courts in order to get a better mount' " on appeal. *State v. Sharpe*, 344 N.C. 190, 194-95, 473 S.E.2d 3, 5 (1996) (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)). We can address only the evidence and argument which respondent presented to the trial court.

While the trial court's findings acknowledge that respondent made some progress in seeking the treatments required by her mental health assessments, they also establish that she showed little to no benefit from the treatments she received. Furthermore, the findings demonstrate that respondent failed to comply with multiple treatment recommendations. Specifically, respondent failed to participate in individual trauma therapy and received no treatment for her diagnosed personality disorder, despite having years to do so. Instead, respondent chose to participate in therapy with licensed clinical social worker Carrie Lynn Saxton Didlake, despite the fact that, in a permanency planning review order entered 10 October 2013, the trial court specifically found that this therapy failed to address her childhood trauma as required. As noted above, the court found that respondent's failure to seek appropriate therapy reflected that she "did not and still does not understand the

necessity of excluding possible concerns stemming from her mental health issues and diagnoses through treatment.”

Despite failing to complete multiple aspects of her plan, respondent contends that her inability to benefit from the treatments she did receive was due solely to her mental illness. Respondent argues that, in light of her condition, the trial court was required to make findings that her failure to make progress was willful, citing *In re J.G.B.*, 177 N.C. App. 375, 628 S.E.2d 450 (2006) and *In re Matherly*, 149 N.C. App. 452, 562 S.E.2d 15 (2002), to support her argument. However, both *J.G.B.* and *Matherly* dealt specifically with inherent age-related limitations that are not applicable to this case. *See Matherly*, 149 N.C. App. at 455, 562 S.E.2d at 18 (trial court “must make specific findings of fact showing that a minor parent’s age-related limitations as to willfulness have been adequately considered”). By failing to seek recommended treatment for several years, respondent clearly fulfilled the willfulness requirement contained in N.C. Gen. Stat. § 7B-1111(a)(2).

Ultimately, the trial court’s unchallenged findings demonstrate that respondent failed to complete vital portions of her case plan during the three years Jim was in foster care and that her failure contributed to her inability to obtain positive results from those portions of the case plan she did complete. Accordingly, the court properly concluded that respondent’s parental rights were subject to

IN RE: J.C.B.

Opinion of the Court

termination due to her failure to make reasonable progress. The trial court's adjudication and disposition orders are affirmed.

AFFIRMED.

Judges STROUD and DAVIS concur.

Report per Rule 30(e).