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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1265

Filed: 5 July 2017

Burke County, Nos. 14 JT 98-99

IN THE MATTER OF: S.D.B. and W.A.B.

Appeal by respondent-mother from order entered 30 September 2016 by Judge Burford A. Cherry in District Court, Burke County. Heard in the Court of Appeals 15 June 2017.

Chrystal Kay for petitioner-appellee Burke County Department of Social Services.

Peter Wood for respondent-appellant mother.

Ellis & Winters LLP, by Emily E. Erixson, for guardian ad litem.

STROUD, Judge.

Respondent appeals from an order terminating her parental rights to her minor children S.D.B. (“Sally”) and W.A.B. (“Walter”).¹ Because the trial court correctly concluded that respondent had willfully failed to pay a reasonable portion

¹ Pseudonyms are used throughout for ease of reading and to protect the identities of the children.

Opinion of the Court

of the cost of care for each of the juveniles, despite having the ability during the relevant time to pay some portion of this cost, we affirm.

Facts

The Burke County Department of Social Services (“DSS”) initiated the underlying juvenile case on 15 August 2014, when it filed a petition alleging Sally and Walter were abused, neglected, and dependent juveniles. DSS alleged that respondent and the children’s father had engaged in domestic violence in front of the children and that respondent had assaulted Sally when she attempted to break up the altercation. DSS further alleged that respondent had committed additional instances of domestic violence against the children’s father and other relatives, had previously physically assaulted Walter, had emotionally abused both children, and suffered from substance abuse problems and mental health disorders. DSS assumed non-secure custody of Sally and Walter that same day.

On 30 October 2014, DSS dismissed its allegation of abuse as to both Sally and Walter and the trial court held an adjudication hearing. The trial court entered an order on 19 December 2014 concluding the children were neglected and dependent juveniles. The court found that respondent had entered into a case plan with DSS and had begun working on the plan, which included parenting classes, a substance abuse assessment and drug screens, psychological and mental health assessments with follow-up therapy, an anger management assessment, and obtaining stable

Opinion of the Court

employment and housing. The trial court continued custody of the juveniles with DSS, authorized DSS to schedule visitation with respondent if approved by the children's therapist, and ordered respondent to submit to drug screens as requested by DSS. Over the course of the next year, the trial court entered three review orders in which it found respondent was making progress on her case plan and granted her visitation with the children.

The trial court held a permanency planning hearing on 7 January 2016. In its order from the hearing, the trial court found that respondent had been allowed unsupervised overnight visits with the children where the children were inappropriately exposed to respondent's boyfriend and his drinking of alcoholic beverages. Respondent also allowed the children's father to speak with them by telephone, even though the court had ordered the father to not contact them. The court found that DSS had concerns that respondent was not being truthful or accountable for her acts and changed the permanent plan for the children to adoption with a secondary plan of reunification with respondent.

On 3 March 2016, DSS filed a petition to terminate parental rights to the children. DSS alleged grounds to terminate respondent's parental rights based on neglect, failure to make reasonable progress to correct the conditions that led to the children's removal from their home, failure to pay a reasonable portion of the cost of care for the children, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (7)

(2015). After a four day hearing culminating on 1 September 2016, the trial court entered an order terminating respondent's parental rights on 30 September 2016. The trial court concluded that all four alleged grounds existed to terminate respondent's parental rights and that termination of her parental rights was in the children's best interests.² Respondent filed timely notice of appeal to this Court.

Discussion

This Court reviews orders in termination of parental rights cases for “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 the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.” *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citations and quotation marks omitted). The trial court’s findings of fact that 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). “The 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) (citations and quotation marks omitted), *aff’d per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

² The trial court also terminated the parental rights of the children’s father, but he did not appeal from the court’s order.

Respondent argues the trial court erred in concluding grounds existed to terminate her parental rights, because she willfully failed to pay a reasonable portion of the cost of care for the children. Respondent contends that her refusal to enter into a voluntary child support agreement does not demonstrate a willful refusal to pay support for the children, and that her monetary gifts directly to the children constitute payment of a reasonable portion of their cost of care. We disagree.

A court may terminate parental rights upon finding that:

The juvenile has been placed in the custody of a county department of social services . . . for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3) (2015). The “cost of care refers to the amount it costs the Department of Social Services to care for the child, namely, foster care.” *In re Montgomery*, 311 N.C. 101, 113, 316 S.E.2d 246, 254 (1984) (quotation marks omitted). “A parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent’s ability or means to pay.” *In re Clark*, 303 N.C. 592, 604, 281 S.E.2d 47, 55 (1981). “[N]onpayment constitutes a failure to pay a reasonable portion if and only if respondent is able to pay some amount greater than zero.” *In re Clark*, 151 N.C. App. 286, 289, 565 S.E.2d 245, 247 (2002) (citation, quotation marks, and brackets omitted). Moreover, it is well established that the absence of a court order, notice, or knowledge of a requirement

Opinion of the Court

to pay support is not a defense to a parent's obligation to pay reasonable costs. *See In re T.D.P.*, 164 N.C. App. 287, 289, 595 S.E.2d 735, 737 (2004) (“[R]espondent’s assertion that a support order is necessary to require him to pay a portion of the cost of T.D.P.’s foster care is also without merit.”), *aff’d per curiam*, 359 N.C. 405, 610 S.E.2d 199 (2005); *see also In re Biggers*, 50 N.C. App. 332, 339, 274 S.E.2d 236, 241 (1981) (holding “[a]ll parents have the duty to support their children within their means[.]”).

Here, the trial court found: respondent was financially and physically able to pay a reasonable portion of the cost of care for the minor children; the Burke County Child Support Enforcement Agency determined that a reasonable amount for respondent to pay was \$121.00 per month; and respondent had provided some gifts and money to the minor children, but the gifts were not consistent and never approached a value of \$121.00 every month. Respondent does not challenge these findings, and we hold they fully support the trial court’s conclusion that respondent willfully failed to pay a reasonable portion of the cost of care for the children.

Respondent’s direct gifts to the children, whether monetary or not, did not offset the amount it cost DSS to provide care for them, and thus have no bearing on the extent to which she paid a reasonable portion of the cost of the care provided to the children. The trial court found that respondent could have paid something towards the cost of care but paid nothing outside of the direct gifts. Respondent had

a duty and means to pay something toward the cost of care for her children and willfully failed to do so. *See In re T.D.P.*, 164 N.C. App. at 290-91, 595 S.E.2d at 738 (“Thus, because the trial court in the instant case correctly found that respondent was able to pay some amount greater than zero during the relevant time period, we hold that sufficient grounds existed for termination of respondent’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(3).”). Accordingly, we overrule respondent’s arguments and hold the trial court did not err in concluding grounds exist to terminate respondent’s parental rights to Sally and Walter pursuant to N.C. Gen. Stat. § 7B-1111(a)(3).

Because we hold the trial court did not err in concluding grounds exist to terminate respondent’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(3), we do not address her arguments regarding the trial court’s conclusions that grounds to terminate her parental rights also exist under N.C. Gen. Stat. § 7B-1111(a)(1), (2) or (7). *See 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 and quotation marks omitted)), *aff’d per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). Respondent has not challenged the trial court’s conclusion

IN RE: S.D.B. & W.A.B.

Opinion of the Court

that termination of her parental rights is in the best interests of Sally and Walter, and we affirm the court's order terminating her parental rights.

AFFIRMED.

Chief Judge McGEE and Judge ARROWOOD concur.

Report per Rule 30(e).