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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-304

Filed: 5 September 2017

Burke County, No. 09 JT 76

IN THE MATTER OF: K.G.M.

Appeal by respondent from order entered 15 December 2016 by Judge Wesley W. Barkley in Burke County District Court. Heard in the Court of Appeals 8 August 2017.

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

*Abigail F. Williams for guardian ad litem.*

*Assistant Appellate Defender J. Lee Gilliam for respondent-mother.*

DAVIS, Judge.

J.A.A. (“Respondent”), the mother of the juvenile K.G.M. (“Kyle”),<sup>1</sup> appeals from the trial court’s order terminating her parental rights. On appeal, she argues that the trial court erred in concluding that she had (1) neglected Kyle; (2) willfully

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile and for ease of reading. See N.C. R. App. P. 3.1(b).

failed to make reasonable progress to correct the condition that led to his removal; and (3) abandoned Kyle. After careful review, we affirm.

### **Factual and Procedural Background**

On 8 May 2009, the Burke County Department of Social Services (“DSS”) filed a petition alleging that Kyle was a neglected juvenile. DSS stated that on 20 April 2009, Respondent failed to pick Kyle up from daycare. DSS further asserted that Respondent had tested positive for controlled substances in April 2009 after denying that she had used controlled substances. Finally, DSS alleged that Respondent’s home was “not suitable for the juvenile in that electrical boxes are exposed, construction materials are laying around, and the home is infested with insects.” On 30 September 2009, the petition was dismissed without prejudice after Respondent complied with her case plan.

DSS filed a second petition alleging neglect and dependency on 12 November 2013. DSS stated that Respondent had failed to pick Kyle up from school and that DSS was unable to locate Respondent either at her residence or her place of work. DSS further asserted that Respondent had previously failed to pick up Kyle from school on several other occasions or had sent people whom he did not know to pick him up. Accordingly, DSS obtained non-secure custody of Kyle.

On 16 January 2014, a hearing was held before the Honorable Robert M. Brady. On 21 February 2014, the trial court entered a consolidated juvenile

adjudication and dispositional order in which it adjudicated Kyle to be dependent based on stipulations made by the parties.

In the dispositional portion of the order, the trial court found that Respondent “ha[d] admitted to recreational cocaine use when her son is not in her care and past issues with substance abuse,” and had “not proven that she has satisfactorily addressed her substance abuse issues[.]” Based on these findings of fact, the court concluded that it was in Kyle’s best interests to remain in DSS custody. The court also ordered that Respondent “submit to a hair follicle test as soon as possible and another hair follicle [drug test] within 90 days . . . [and] submit to urine drug screens.” The court set forth a permanent plan of reunification and allowed Respondent unsupervised visitation. The court granted DSS discretion to revoke unsupervised visitation and convert it to supervised visitation should Respondent test positive for illegal or non-prescribed drugs or should she refuse a drug screen.

On 8 May 2014, the trial court entered a juvenile review order, finding that Respondent “did not comply with a request for a random drug screen on February 28, 2014[,]” “tested positive for cocaine on March 17, 2014,” and “submitted . . . a diluted screen specimen on March 28, 2014.” The court found that Respondent “does not seem to appreciate the gravity of her substance abuse issues” and “blamed her friend for bringing drugs around her.” It also determined that she had “stated that [Kyle] has not been around her when she has used drugs, [and] therefore he is not affected

by her choice to use [drugs].” Because her drug screen came back positive, DSS ceased her unsupervised visitations.

On 31 July 2014, the trial court entered a juvenile review order, finding that Respondent had failed to comply with requests for four separate random drug screens in May and June 2014. In a juvenile review order entered on 19 September 2014, the court found that Respondent had tested positive for cocaine on 22 May and 24 June 2014 and submitted a diluted sample on 10 June 2014. Once again, because she tested positive for illegal drugs, visitation was changed from unsupervised to supervised.

On 10 December 2014, the trial court entered a review order stating that Respondent had attended in-patient substance abuse treatment from 25 August 2014 until 8 September 2014 and had tested negative on several urine drug screens in July 2014 and September 2014. However, she tested positive for cocaine on a hair follicle drug screen on 7 November 2014. Nevertheless, the court ordered that Kyle be placed in Respondent’s home for a “trial home placement.”

On 22 January 2015, the trial court held a review hearing. DSS presented a report to the court, describing an incident that took place on or about 17 December 2014 while Respondent was residing with Kyle and his father (“Mr. M.”).<sup>2</sup> Mr. M. was drinking alcohol, and he and Respondent got into a “drunken altercation” in front

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<sup>2</sup> Mr. M. is not a party to this appeal.

of Kyle. During the argument, Mr. M. pushed Kyle to move him from the door so he could leave. Law enforcement officers were called, and Mr. M. left the residence.

In addition to this incident, DSS reported that Respondent had tested positive for cocaine in a hair follicle drug test on 18 December 2014. The report also stated that the amount of cocaine in her system on this date had increased since Respondent's prior failed test and that she admitted to DSS that she had used cocaine before her last court date and after completing in-patient treatment.

On 25 February 2015, the trial court entered a juvenile review order based on the information presented at the 22 January 2015 hearing. The court ordered that Kyle be removed from his trial placement with Respondent due to concerns regarding substance abuse and domestic violence. The court ceased reunification efforts. On 26 March 2015, the trial court changed the permanent plan to custody or guardianship with a concurrent plan of adoption.

On 4 June 2015, DSS filed a report for permanency planning review in which it noted that Respondent had made an effort to achieve her case plan by "complet[ing] the 10 hours of the recommended treatment." The report also stated that "she has limited awareness of her use and abuse of drugs and has a tendency to blame others for her situation."

On 17 December 2015, the trial court held a review hearing, and it entered a permanency planning review order on 28 January 2016. In its order, the court noted

Respondent's long history of abusing cocaine and found that she had most recently tested positive for cocaine on 27 August 2015, 4 November 2015, and 17 December 2015. Respondent had periodically been permitted visitation with Kyle, but the visits were suspended due to her failed drug tests or refusal to submit to drug screens. The court placed legal custody and placement authority of Kyle with DSS and changed the permanent plan for him to a primary plan of adoption with a secondary plan of custody or guardianship. The court ordered that Respondent would have supervised weekly visitation with Kyle.

On 25 February 2016, DSS filed a verified petition in Burke County District Court to terminate Respondent's parental rights. A hearing was held before the Honorable Wesley W. Barkley. On 15 December 2016, the trial court entered an order in which it determined that grounds existed to terminate Respondent's parental rights based on (1) neglect; (2) willful failure to make reasonable progress; and (3) abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (2), (7) (2015). The trial court further concluded that it was in Kyle's best interests that Respondent's parental rights be terminated. Based on its findings of fact and conclusions of law, the trial court terminated Respondent's parental rights. Respondent filed a notice of appeal.

### **Analysis**

On appeal, Respondent argues that the trial court erred by concluding that grounds existed to terminate her parental rights. We disagree.

“A termination of parental rights proceeding is held in two phases, the adjudication stage and the disposition stage.” *In re D.R.F.*, 204 N.C. App. 138, 141, 693 S.E.2d 235, 238 (2010) (citation omitted). At the adjudicatory stage, “the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists.” *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (citation omitted). A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (citation omitted). “The standard of appellate review is whether the trial court’s findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law.” *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted). We review the trial court’s conclusions of law *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff’d per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

In the present case, the trial court made the following pertinent findings of fact:

22. On January 16, 2014, the juvenile was found dependent pursuant to an adjudication hearing. . . . The issues that caused the juvenile to be dependent was [sic] the respondent mother not picking the juvenile [sic] up from school.
23. Once the nonsecure custody order was entered regarding the juvenile in November, 2013 the Court

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started the process through a family service case plan to address the issues of the respondent mother's admitted use of cocaine and past issues of substance abuse issues as shown in finding[s] in the January 14, 2014 adjudication/disposition order.

24. Once the family service case plan was established the Court could determine that [a] portion of the issues, [including] the respondent mother not picking [Kyle] up from school, stemmed from the respondent mother's substance abuse.

25. The respondent mother has openly admitted her substance abuse issues and indicated that she has used illegal substance[s] for ten (10) years.

. . . .

27. The respondent mother tested positive for cocaine on a drug screen on March 17, 2014.

28. The respondent submitted to a drug screen on March 28, 2014 and the results were diluted.

29. The respondent submitted to a drug screen on June 10, 2015 and the results were diluted[.]

30. The respondent mother submitted to a drug screen on June 24, 2014 and the results were positive for cocaine.

. . . .

36. The respondent mother submitted to a hair follicle [drug test] on November 7, 2014 and tested positive for cocaine and benzodiazepines.

37. The respondent mother submitted to a drug screen on December 18, 2014 and tested positive for cocaine and benzodiazepines.

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39. On October 12, 2015, the respondent mother refused to submit to a drug screen.
40. The respondent mother submitted to a drug screen December 17, 2015 in court and tested positive for cocaine.
41. The respondent mother submitted to a drug screen with Burke Occupational on February 25, 2016 and tested positive for cocaine.
42. The respondent mother admitted in her testimony that she had recently used cocaine a month prior.
43. The issues that led to the removal of the child . . . include not picking child up . . . and not telling the child who . . . was picking him [up.]

....

48. The respondent mother's failure to treat her substance issues and her failure to be a stable force [has resulted in her leaving] the juvenile in foster care for more than twelve (12) months without reasonable progress to address those issues.
49. The respondent mother has continued to have issues with substance abuse despite that the respondent mother completed twelve (12) sessions with Burke Recovery, she completed in-patient treatment from August 25, 2014 to September, 2014, and subsequent treatment with Burke Recovery and attended NA/AA meeting[s]. However, even with all this treatment the respondent mother continues to test positive for illicit substances.
50. The respondent mother has went [sic] to substance

abuse treatment on multiple occasions on different levels and she has continued to have substance abuse issues.<sup>3</sup>

(Footnote added.)

Based on these findings, the trial court made, in pertinent part, the following conclusion of law:

5. By clear, cogent, and convincing evidence, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) the respondent parents have willfully left the juvenile in foster care for more than twelve (12) months without showing to the satisfaction to [sic] the Court that reasonable progress under the circumstances has been made in correcting the conditions that led to the removal of the juvenile.

In order to terminate a parent's rights under N.C. Gen. Stat. § 7B-1111(a)(2), the trial court must perform a two-part analysis. The trial court must determine by clear, cogent and convincing evidence that: (1) "a child has been willfully left by the parent in foster care or placement outside the home for over twelve months[;]" and (2) "the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child." *In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005) (internal citations omitted). "Willfulness under

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<sup>3</sup> We are bound by those findings not challenged by Respondent on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged findings are deemed supported by competent evidence and are binding on appeal). Moreover, we review only those findings necessary to support the trial court's determination that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate Respondent's parental rights. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

this section means something less than willful abandonment and does not require a finding of fault by the parent.” *In re B.S.D.S.*, 163 N.C. App. 540, 545, 594 S.E.2d 89, 93 (2004) (citation omitted). “Willfulness may be found where a parent has made some attempt to regain custody of the child but has failed to exhibit reasonable progress or a positive response toward the diligent efforts of DSS.” *Id.* (citation and quotation marks omitted).

This Court has repeatedly emphasized that “extremely limited progress is not reasonable progress.” *Id.* (citation, quotation marks, and brackets omitted). “Implicit in the meaning of positive response is that not only must positive efforts be made towards improving the situation, but that these efforts are obtaining or have obtained positive results.” *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995) (citation omitted). “Otherwise, a parent could forestall termination proceedings indefinitely by making sporadic efforts for that purpose.” *Id.* (citation omitted).

In the present case, Respondent’s argument concerning the termination of her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) is primarily based on her assertion that substance abuse was not the condition that led to the removal of the juvenile. Respondent contends that Kyle was removed based on her failure to pick him up from daycare and that she has since corrected this problem. She further asserts that substance abuse only became an issue *after* Kyle’s removal from her

custody and, therefore, could not form the basis for the termination of her parental rights. We are not persuaded by her argument.

The immediate event leading to the removal of Kyle involved Respondent's failure to pick Kyle up from daycare. However, in Finding No. 24 of the termination order,<sup>4</sup> the trial court found that Respondent's failure to pick him up from daycare "stemmed from [her] substance abuse." Moreover, in Finding No. 25, the trial court found that Respondent "openly admitted her substance abuse issues and indicated that she has used illegal substance[s] for ten (10) years[,]” which precedes the first date of removal of the juvenile from her custody.

In the termination order, the trial court found that Respondent had admitted to substance abuse and had not satisfactorily addressed her substance abuse issues as required under her case plan. *See* N.C. Gen. Stat. § 7B-904(d1)(3) (2015) (the trial court may order a parent to “[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile’s adjudication or to the court’s decision to remove custody of the juvenile from the parent”). Thus, Respondent’s failure to comply with her case plan under these circumstances was sufficient to support a determination that she failed to correct the conditions that led to the removal of Kyle.

Respondent contends that she has “worked hard to address” her substance abuse issues. However, the trial court made multiple findings of fact unchallenged

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<sup>4</sup> Respondent does not challenge Finding No. 24, and thus it is binding on appeal. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

by Respondent on appeal that she failed or refused to submit to multiple drug tests. Moreover, the court found that Respondent's substance abuse issues continued to persist despite "treatment on multiple occasions on different levels." The trial court found as fact that when Respondent was asked "whether she was willing to go to in-patient . . . she testified she was not due to her fear of losing employment."

Accordingly, we hold that the trial court did not err in concluding that grounds existed to terminate Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).<sup>5</sup> *See Nolen*, 117 N.C. App. at 700, 453 S.E.2d at 224 (holding that respondent had not made "reasonable progress" where alcoholism and abusive living arrangements continued throughout the three years children were in foster care "with little or no signs of progress").

### **Conclusion**

For the reasons stated above, we affirm the trial court's 15 December 2016 order.

AFFIRMED.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).

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<sup>5</sup> Respondent additionally argues that the trial court erred by determining that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7) to terminate her parental rights. However, because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to support the trial court's order, we need not address the remaining grounds found by the trial court to support termination. *See Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.