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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-360

Filed: 19 September 2017

Johnston County, No. 16 JT 93

IN THE MATTER OF: C.S.H.

Appeal by respondent from order entered 17 January 2017 by Judge Paul A. Holcombe, III in Johnston County District Court. Heard in the Court of Appeals 31 August 2017.

*Sandlin Family Law Group, by Deborah Sandlin, for petitioner-appellee.*

*Jeffrey William Gillette for respondent-appellant.*

*No brief filed by Guardian ad Litem.*

INMAN, Judge.

Respondent appeals from an order terminating her parental rights. After careful review, we affirm.

**Factual and Procedural History**

Respondent (“Mother”) is the mother of the juvenile C.S.H. (“Carl”).<sup>1</sup> Petitioner (“Father”) is Carl’s father. Mother and Father never married, and Carl was born out of wedlock. On 20 August 2012, the parties entered into a Parenting Agreement which was later incorporated into a court order. Pursuant to the Parenting Agreement, the parties shared custody of the juvenile, but Carl primarily resided with Father.

On 8 May 2014, the trial court entered an emergency custody order after finding there was a change of circumstances affecting the juvenile. The trial court found that Mother’s physical appearance and overall health had “drastically declined,” noting that her eyes appeared to be “glazed over” and her speech was slurred. Father had also contacted Child Protective Services over concerns regarding potential substance abuse by Mother and its effect on the safety and welfare of the juvenile. The court ordered Mother to get a hair follicle drug test and granted her supervised visitation with the juvenile. On 13 August 2014, Mother was ordered to pay \$193.00 per month in child support, plus an additional \$30.00 per month in arrearages for retroactive support. Mother was additionally ordered to pay to Father 25% of unreimbursed medical expenses for the juvenile.

On 12 May 2015, the court entered a permanent custody order in which it granted Father sole legal and physical custody of the juvenile. The court found that

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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) (2017).

Mother: (1) had a long history of drug abuse; (2) failed to comply with the court's 2014 order to obtain a hair follicle drug test; (3) had sporadically visited with the juvenile; (4) had not visited with the juvenile since 18 July 2014; and (5) had been charged with several criminal offenses and was on probation. The court prohibited Mother from visiting with the juvenile.

On 5 May 2016, Father filed a petition to terminate Mother's parental rights. On 17 January 2017, the trial court entered an order terminating Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), (a)(4) (willful failure to pay support), and (a)(7) (abandonment) (2015). Mother filed timely notice of appeal.

### **Analysis**

Mother argues that the trial court erred by concluding that grounds existed to terminate her parental rights. We disagree.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. 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). "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) (citing *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838,

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840 (2000)). 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).

In the instant case, the trial court concluded that grounds existed to terminate Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(4). Under this statutory section, grounds to terminate parental rights exist where:

One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

N.C. Gen. Stat. § 7B-1111(a)(4).

Here, with respect to N.C. Gen. Stat. § 7B-1111(a)(4), the trial court made the following finding of fact:

Upon her release from incarceration in mid-February 2016[,] [Mother] was employed at the Farmer's Market Restaurant. Despite being employed and being subject to a Temporary Child Support Order, . . . [Mother] failed to pay any child support or other financial support to the [Father] in the twelve (12) months preceding the filing of the TPR petition. Additionally, [Mother] failed to pay any support or contribute to the juvenile's unreimbursed medical expenses from July 2014 to April 2015. . . . Clearly, [Mother] had the ability to pay an amount greater than zero dollars (0.00).

Mother argues that this finding was not based on clear, cogent, and convincing evidence. We disagree. Mother admitted through her own testimony that she was

aware of the temporary support order, that she worked at the Farmer's Market Restaurant from February through May 2016, and that she did not provide any support for the juvenile.

Mother further argues that the trial court erred by finding that her failure to pay was willful or without justification, and the trial court improperly shifted the burden of proof to Mother to prove her failure to pay was without justification. We are not persuaded.

Here, the trial court found that Mother: (1) was subject to a judicial decree requiring the payment of child support to Father; and (2) failed to pay any child support during the relevant statutory period. The existence of the support order supports a conclusion that Mother was required to pay some amount greater than zero. Additionally, the trial court's findings that Mother was employed during the relevant time period and paid no child support provides a basis for the trial court's determination that Mother's failure to pay was "willful" and "without justification." *See In re J.D.S.*, 170 N.C. App. 244, 257-58, 612 S.E.2d 350, 358-59 (2005) (holding that the respondent's *de minimis* financial support of child in violation of child support decree, notwithstanding the respondent's ability to pay child support, established grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(4)).

The burden of proof lies with the petitioner throughout the adjudicatory phase of a termination of parental rights hearing. *See* N.C. Gen. Stat. § 7B-1109(f) (2015);

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*In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). However, this Court has held that once a petitioner presents evidence of a respondent's ability to pay, it creates a rebuttable presumption that the respondent's failure to pay was willful and without justification. In *J.D.S.*, this Court, when upholding an order terminating parental rights under N.C. Gen. Stat. § 7B-1111(a)(4), noted:

And, . . . [the] respondent herein *could have rebutted* [the] petitioner's evidence of his ability to pay by presenting evidence that he was in fact unable to pay support, but he did not do so. Instead, as the evidence and findings amply demonstrate about the present appeal, [the] respondent chose to provide *de minimis* financial support notwithstanding his ability to do otherwise.

170 N.C. App. at 257-58, 612 S.E.2d at 359 (emphasis added) (internal quotation marks and citations omitted); *see also Bost v. Van Nortwick*, 117 N.C. App. 1, 16, 449 S.E.2d 911, 919 (1994) (“[I]n an action to terminate parental rights, the respondent parent may present evidence to prove he was unable to pay child support in order to rebut a finding of willful failure to pay. . . .”); *In re Roberson*, 97 N.C. App. 277, 281-82, 387 S.E.2d 668, 670 (1990) (upholding a termination order after noting that the “[r]espondent could have rebutted [the] petitioner's evidence of his ability to pay by presenting evidence that he was in fact unable to pay support, but he did not do so”).

The trial court, in this case, did not improperly shift the burden of proof to Mother. Rather, once Father presented the court with evidence satisfying the rebuttable presumption that Mother had the ability to pay and did not do so, the

burden shifted, consistent with well-established law, and Mother failed to adequately rebut Father's showing. Thus, the trial court properly determined that Mother's failure to pay was both willful and without lawful excuse. Consequently, we hold that the trial court did not err in concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(4) to terminate Mother's parental rights.

Mother additionally argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7) to terminate her parental rights for neglect and abandonment respectively. However, because we conclude that grounds existed to support the trial court's order terminating Mother's parental rights on another ground, we need not address the remaining grounds found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Accordingly, we affirm.

AFFIRMED.

Chief Judge MCGEE and Judge DIETZ concur.

Report per Rule 30(e).