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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-476

Filed: 7 November 2017

Iredell County, No. 15 JT 99-100

IN THE MATTER OF: E.D.B. & G.L.B.

Appeal by respondent from orders entered 31 January 2017 by Judge Edward L. Hedrick, IV, in Iredell County District Court. Heard in the Court of Appeals 5 October 2017.

*Lauren Vaughan for petitioner-appellee Iredell County Department of Social Services.*

*N. Elise Putnam for respondent-appellant mother.*

*Melanie Stewart Cranford for guardian ad litem.*

INMAN, Judge.

Respondent mother (“Mother”) appeals from an order terminating her parental rights as to her children E.D.B. and G.L.B. (“Eddy” and “Gil”).<sup>1</sup> After careful review, we affirm.

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<sup>1</sup> Pseudonyms are used to protect the identities of the juveniles and for ease of reading. See N.C.R. App. P. 3.1(b).

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On 5 June 2015, the Iredell County Department of Social Services (“DSS”) filed a petition alleging that Eddy and Gil were neglected juveniles. DSS stated that it had received two Child Protective Services reports stating that Mother and the children’s father: (1) had engaged in domestic violence in the presence of the children; and (2) were abusing drugs and alcohol. Eddy and Gil were removed from their home and placed in a kinship arrangement on 13 April 2015. On 21 July 2015, Mother and the father consented to an adjudication of neglect.

On 11 August 2016, DSS filed petitions to terminate their parental rights. On 31 January 2017, the trial court entered orders in which it determined that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a) (2015) on the basis of neglect and willful failure to make reasonable progress. N.C. Gen. Stat. § 7B-1111(a)(1)-(2). The trial court entered a separate, combined dispositional order in which it concluded that it was in the children’s best interests that Mother’s and the father’s parental rights be terminated. Accordingly, the trial court terminated their parental rights. Mother appeals.<sup>2</sup>

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 provides the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is

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<sup>2</sup> The father did not appeal.

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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, 840 (2000), *appeal dismissed, disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001)). 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 instant case, the trial court concluded that grounds existed to terminate Mother’s parental rights for willfully leaving the children in foster care for more than twelve months without making reasonable progress to correct the conditions that led to the removal of the children, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). 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 that 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).

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Here, in support of its conclusion that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate Mother's parental rights, the trial court found as fact:

13. In December 2014, the Respondent Father and Respondent Mother snorted Xanax at a time when they were caretakers of the Minor Children and the Minor Children were in the home in another room. This activity caused [the parents] to be impaired.

14. On or about April 13, 2015, the Respondent Father returned to the home to find the Respondent Mother consuming controlled substances while caring for the Minor Children. The next morning in the presence of the Minor Children the Respondent Mother acted impaired. At the same time, the Respondent Mother and Respondent Father's sister engaged in a fist fight at the front yard in the presence of the Minor Children.

15. On or about April 13, 2015, the Respondent Parents physically fought over the Minor Child [Eddy] in the presence of [Eddy] for a period of over two hours.

16. Both Respondent Parents used controlled substances Xanax and marijuana at times when they were caring for the Minor Children.

17. On 21 July 2015, the Minor [Children were] adjudicated neglected and placed into the custody of Iredell DSS.

18. The Respondent Parents entered into an Out of Home [F]amily Services Agreement ("Case Plan") on August 21, 2015.

19. Issues that led to the removal of the Minor [Children] were substance abuse by the Respondent Parents, the mental health of the Respondent Parents.

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20. To correct those conditions that led to the removal of the Minor [Children], the Respondent Mother agreed to attend substance abuse treatment and to submit to random drug screens as requested. . . .

21. Between the time of the entry of the Case Plan on August 21, 2015 and June 2, 2016, the Respondent [Mother] failed to comply with [her] substance abuse objectives. Specifically, the Court finds as follows:

. . . .

c. From August 27, 2015 to September 20, 2016, the Respondent Mother attended only 2 of her 36 requested drug screens. On 22 December 2015, she tested positive for THC and on June 13, 2016, she tested negative; and

d. The Respondent Mother failed to regularly attend substance abuse treatment. Although the Respondent sporadically attended some support groups, she failed to follow through as requested.

22. To address [her] mental health concerns, [the] Respondent Mother agreed to attend support groups for mental health on a regular basis. . . . The Respondent [Mother] failed to meet [her] objectives as follows:

. . . .

c. The Respondent Mother did not attend counseling services that were recommended.

. . . .

25. While this action has been pending, in September 2016, the Respondent Mother gave birth to another minor child that tested positive for prescription medications for which the Respondent Mother did not have a prescription. The

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said minor child remains in her care pursuant to a safety plan of Iredell DSS.

We are bound by those findings not challenged by Mother on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (holding that unchallenged findings are presumed 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 her parental rights. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (holding that erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

Mother argues that she corrected the conditions that led to the removal of her minor children and asserts that there was no evidence presented at the termination hearing that she currently had substance abuse or mental health issues. As evidence of her improvement, Mother cites the fact that she recently had another child and a DSS social worker testified she was appropriately caring for that child and there were no safety concerns. We are not persuaded.

In the instant case, Mother was required to complete a case plan to address her substance abuse and mental health problems. The record demonstrates that she failed to complete her case plan. The trial court made findings of fact that are unchallenged by Mother on appeal that she failed or refused to submit to multiple drug tests, did not regularly attend substance abuse treatment, and failed to attend

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mental health counseling. We note that the purpose of a case plan is to effect reunification and address the issues that led to the removal of the juvenile. *See* N.C. Gen. Stat. § 7B-904(d1)(3) (2015) (providing that 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 . . .”). It necessarily follows that Mother’s failure to complete her case plan may support a determination that she failed to correct the conditions that led to the removal of the juvenile.

Whereas the social worker testified that Mother was appropriately caring for her newborn child, she also testified that she is not the social worker assigned to that child and had no involvement in the case. Moreover, the child tested positive at birth for prescription medications for which Mother did not have a prescription, and she is only allowed contact with the child through her compliance with a safety plan and with the involvement of the paternal grandmother.

This Court has repeatedly emphasized that “[e]xtremely limited progress is not reasonable progress. 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) (internal citations and quotation marks omitted). Based on the unchallenged facts of this case

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as found by the trial court, we conclude that the trial court properly determined that Mother had failed to make reasonable progress in correcting the conditions that led to the removal of her children. Accordingly, we hold that the trial court did not err in concluding that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Mother additionally argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate her parental rights for neglect. 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 ground found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Mother next argues that the trial court abused its discretion when it determined that termination of her parental rights was in the best interest of the juveniles, in light of its findings that the children have a bond with Mother. We are not persuaded, because the record reflects that the trial court determined that other statutory factors weighed in favor of termination.

After an adjudication that one or more grounds for terminating a parent's rights exist, the trial court must determine whether terminating the parent's rights is in the juvenile's best interests by considering the following criteria:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.

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- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2015). This Court reviews the trial court's best interests determination for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

Here, at disposition, after noting the ages of the juveniles, the trial court made the following findings of fact:

3. The likelihood of the adoption of the juveniles is very likely. The juveniles have been in their current placement since August of 2015. Their current foster parents . . . desire to adopt the juveniles. [Their foster parents] have adopted 3 other children and therefore understand the legal significance of adoption and have not been encumbered with barriers to prior adoptions. DSS has monitored the juveniles in this placement and expressed no concerns[.] [The foster parents'] home is appropriate for the juveniles.
4. The termination of parental rights will aid in the

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accomplishment of the permanent plan for the juveniles. The primary permanent plan for the juveniles is adoption.

5. [Eddy] is bonded with both of his parents. He enjoys visiting with his parents and plays with his parents at the visits. [Eddy] suffers anxiety surrounding visits with his parents which could be attributed to being separated from them. Although [Gil] is younger than [Eddy], he is also bonded with his parents. He loves to see them at visits. . . .

6. The quality of the relationship between the juveniles and the [foster parents] is of high quality. [The foster mother] is a stay at home mother. [Eddy] is very bonded with [the foster mother] and her husband[.] When [Eddy] entered foster care he exhibited extreme symptoms of anxiety and a lack of coping skills. The [foster parents] enrolled him in therapy and have seen great improvement. [Eddy] has been released from therapy by his therapist. The [foster parents] play with [Eddy] and have enrolled him in extracurricular activities. He has accompanied their family on vacation and is bonded with the [foster parents'] other children. [Gil's] relationship with the [foster parents] is also of high quality. He is also bonded to all members of the family. He has attended family vacations with his brother and the [foster parents]. He has suffered some anxiety when being separated from the [foster parents].

Mother does not challenge any of the trial court's dispositional findings, therefore they are binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Mother contends that the trial court failed to give proper consideration to the strong bond between her and her children, and, considering the bond, the trial court should protect Eddy and Gil from unnecessary severance of that relationship. We disagree. When considering the statutory factors, the court made the dispositional

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finding that the juveniles were bonded with Mother. Thus, it is apparent that the court did not ignore this statutory factor. Nevertheless, the court determined that other factors outweighed this bond and that termination was in the best interests of the juveniles. Consequently, we conclude that the trial court's findings sufficiently demonstrate that it considered the statutory factors set forth in N.C. Gen. Stat. § 7B-1110(a), and we cannot say the trial court's ultimate conclusion is manifestly unsupported by reason. We therefore hold that the trial court did not abuse its discretion when it concluded that it was in the juveniles' best interest to terminate Mother's parental rights. Accordingly, we affirm the trial court's orders terminating Mother's parental rights.

AFFIRMED.

Chief Judge MCGEE and Judge DIETZ concur.

Report per Rule 30(e).