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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-356

Filed: 7 November 2017

Lenoir County, Nos. 14 JT 75-77, 96

IN THE MATTER OF: Z.M.S., A.Z.S., Z.L.S., M.J.H.

Appeal by respondent-mother from orders entered 19 January 2017 by Judge Beth Heath in Lenoir County District Court. Heard in the Court of Appeals 5 October 2017.

Robert W. Griffin for petitioner-appellee Lenoir County Department of Social Services.

Robert W. Ewing for respondent-appellant mother.

Cranfill Sumner & Hartzog LLP, by Katherine Barber-Jones, for guardian ad litem.

DIETZ, Judge.

Respondent-mother appeals from the trial court's orders terminating her parental rights to her four children, Zack, Amy, Zane, and Mark.¹ As explained below, there was sufficient evidence in the record to support the trial court's finding that

¹ We use pseudonyms to protect the identity of the juveniles.

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Respondent willfully failed to make reasonable progress to correct the conditions that led to removal of her children. *See* N.C. Gen. Stat. § 7B-1111(a)(2). Accordingly, we affirm the trial court's termination orders.

Facts and Procedural History

On 10 October 2014, the Lenoir County Department of Social Services obtained nonsecure custody of Respondent's three children, Zack, Amy, and Zane, and filed juvenile petitions alleging that they were neglected and dependent juveniles. The petitions alleged that Respondent had a history of substance abuse, had been diagnosed with schizophrenia, exhibited numerous mental health issues, and was unable to take necessary medication while pregnant with her fourth child, Mark. DSS later obtained nonsecure custody of Mark after Respondent admitted to using cocaine during her pregnancy, causing Mark to be hospitalized for withdrawal.

The trial court entered a series of orders setting out the treatment and rehabilitation necessary for Respondent to reunify with her children. The court ordered Respondent to undergo mental health and substance abuse assessments, to follow treatment recommendations, to obtain stable housing, to participate in family drug treatment court, to submit to random drug testing, and to remain in contact with DSS and the guardian ad litem.

Over time, Respondent made some efforts to comply with the court's orders, but issues persisted. Respondent continued to struggle with substance abuse,

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including cocaine use; she repeatedly fired mental health providers shortly after hiring them, preventing any continuity in her mental health treatment; and she failed to comply with treatment recommendations and did not maintain contact with DSS.

On 28 March 2016, DSS petitioned to terminate Respondent's parental rights. The petitions alleged that: (1) Respondent continued to experience serious, recurring substance abuse and mental health problems resulting in periods of hospitalization, followed by a short period of recovery and stability, and then relapse; and (2) Respondent had not communicated with her children in over a year, seeing them last on 12 February 2015.

On 19 January 2017, the trial court entered orders terminating Respondent's parental rights to her children based on several grounds, including willful failure to make reasonable progress towards correcting the conditions that led to removal. Respondent timely appealed.

Analysis

We begin our analysis with the trial court's determination that Respondent failed to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2). That provision permits the trial court to terminate parental rights if the court finds that the parent willfully left the juveniles in foster care for more than twelve months and, during that time, failed to make reasonable progress to correct the conditions which

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led to the juveniles' removal from the home. *In re O.C.*, 171 N.C. App. 457, 464–65, 615 S.E.2d 391, 396 (2005).

“Willfulness” in this context does not require a showing of fault. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996). Rather, this Court finds willfulness when “the respondent had the ability to show reasonable progress, but was unwilling to make the effort.” *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001).

Here, the primary conditions leading to the juveniles' removal were Respondent's mental health problems and her substance abuse problems. These issues, together, impaired her parenting abilities. Respondent argues that her failure to make “reasonable progress” to correct these conditions was not willful because, despite suffering some setbacks, she sought treatment and made efforts to address these issues, particularly her mental health problems. We reject this argument because, as explained below, these sporadic efforts do not undermine the trial court's willfulness finding.

To be sure, Respondent tested negative for illegal drugs over one eight-month period. Respondent also frequently underwent mental health treatment after her children were removed from her home. But this Court repeatedly has upheld a trial court's findings of willfulness where a parent made some *efforts* to regain custody of her children, but failed to show actual, positive *progress* in correcting the conditions

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that led to the children's removal. *See In re Nolen*, 117 N.C. App. 693, 699–70, 453 S.E.2d 220, 224–25 (1995); *In re J.L.H.*, 224 N.C. App. 52, 54, 741 S.E.2d 333, 335 (2012). If we held otherwise, it would permit parents to indefinitely forestall termination without actually making any reasonable progress to correct the conditions that led to removal—in effect undermining the purpose of this section of the statute. *In re Tate*, 67 N.C. App. 89, 94, 312 S.E.2d 535, 539 (1984).

Here, the trial court established clear reunification objectives for Respondent, most of which addressed her mental health and substance abuse issues. The findings show that Respondent sporadically complied with treatment recommendations and exhibited short periods of stability. But more often than not, Respondent failed to cooperate with her court-ordered recommendations; failed to take her prescription medication; fired her treatment providers, thus preventing any continuity of care; and refused to take other steps necessary to obtain steady mental health treatment. Instead, much of Respondent's mental health treatment came about because Respondent's mental illness peaked and she was forced to visit emergency rooms or be involuntarily committed. Moreover, Respondent continued to use illegal drugs, including cocaine, failed to complete drug testing and treatment programs, and failed to communicate with DSS after her children were removed from the home.

All of this evidence, taken together, indicates that Respondent had the ability to make reasonable progress toward reunification with her children, but willfully

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failed to do so. Accordingly, the trial court's findings concerning willfulness under N.C. Gen. Stat. § 7B-1111(a)(2) are supported by clear, cogent, and convincing evidence in the record. Because we reject Respondent's argument and uphold the termination order on this basis, we need not address Respondent's other arguments challenging the termination of her parental rights. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426–27 (2003).

Conclusion

We affirm the trial court's orders terminating Respondent's parental rights.

AFFIRMED.

Chief Judge McGEE and Judge INMAN concur.

Report per Rule 30(e).