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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-573

Filed: 6 February 2018

Caldwell County, No. 14 JA 112

IN THE MATTER OF: S.K.D.M.

Appeal by respondent-mother from order entered 17 February 2017 by Judge Burford A. Cherry in Caldwell County District Court. Heard in the Court of Appeals 18 January 2018.

Lucy R. McCarl for petitioner-appellee Caldwell County Department of Social Services.

David A. Perez for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by Andrew P. Lopez, for guardian ad litem.

HUNTER, JR., Robert N., Judge.

Respondent-mother appeals from an order terminating her parental rights to her minor child S.K.D.M. ("Susan").[1] We affirm.

I. Procedural and Factual Background

[1] The parties have stipulated to this pseudonym for the minor child pursuant to N.C.R. App. P. 3.1(b).

On 18 February 2014, the Caldwell County Department of Social Services ("DSS") received a report stating respondent-mother left two-year-old Susan unattended while she went outside to smoke cigarettes. The report also stated respondent-mother had to be reminded to bathe Susan, and respondent-mother was addicted to pain medications. DSS found the allegations were true, and began intensive in-home services. DSS closed the case on 1 April 2014.

On 12 June 2014, DSS received another report stating respondent-mother was leaving Susan unattended while she went to smoke cigarettes. DSS investigated and discovered Susan had ingested the drug Clonidine after acquiring it from respondent-mother's purse while respondent-mother left her unattended. Susan was taken to Carolina Medical Center and treated for an overdose. At the time, Respondent-mother and Susan were staying at the Caldwell County Shelter Home. However, that residence provided respondent-mother with an "exit date," and she had no other suitable housing options. As a result, DSS filed a juvenile petition on 16 June 2014 alleging Susan was neglected and dependent. The trial court gave DSS nonsecure custody of Susan and placed her in foster care.

On 8 August 2014, the trial court entered an order adjudicating Susan as a dependent juvenile. Respondent-mother stipulated to the allegations in the petition. DSS voluntarily dismissed the neglect allegation without prejudice. The court also entered a disposition order which required respondent-mother to complete parenting

classes and demonstrate skills learned from the classes during her visitation, to submit to random drug screenings, to complete a domestic violence assessment and comply with any resulting recommendations, to seek and obtain independent housing, and to seek and obtain gainful employment.

On 24 July 2015, the trial court entered a review order which found respondent-mother had not completed domestic violence classes, had been unable to obtain stable housing and employment, had been inconsistent with visitation, and had not been attending family therapy. The trial court also found DSS had trouble locating respondent-mother for purposes of drug screening due to her instability in housing. As a result, the trial court relieved DSS of further reunification efforts. On 3 September 2015, the trial court entered a permanency planning order setting the permanent plan as adoption.

On 18 March 2016, DSS filed a motion to terminate respondent-mother's parental rights on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of Susan's cost of care, dependency, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6)-(7) (2015). The trial court heard the motion on 7 December 2016 and 31 January 2017.[2] On 17 February 2017, the trial court entered an order terminating respondent-mother's parental rights based on

[2] The motion also sought to terminate respondent-mother's parental rights as to Susan's older sibling. However, DSS did not proceed with termination as to the sibling during Susan's hearing.

each of the five grounds alleged by DSS.[3] Respondent-mother timely filed notice of appeal.

Respondent-mother's sole argument is the trial court erred by concluding that grounds existed to terminate her parental rights. We disagree.

II. Standard of Review

"The standard for review in termination of parental rights cases is 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 unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court." *In re A.R.H.B.*, 186 N.C. App. 211, 214, 651 S.E.2d 247, 251 (2007) (internal quotation marks and citations omitted), *appeal dismissed*, 362 N.C. 235, 659 S.E.2d 433 (2008).

III. Analysis

Pursuant to N.C. Gen Stat. § 7B-1111(a)(3), a parent's rights may be terminated when

> [t]he juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, 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

[3] The order also terminated the parental rights of Susan's father, who is unknown.

> of care for the juvenile although physically and financially able to do so.

"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) (*quoting In re Bradley*, 57 N.C. App. 475, 479, 291 S.E.2d 800, 802 (1982)), *disc. review denied*, 356 N.C. 302, 570 S.E.2d 501 (2002). When an order for child support has been entered and is in effect during the relevant six-month period, the petitioner is not required to independently prove the respondent-parent's ability to pay. *See In re S.T.B.*, 235 N.C. App. 290, 296, 761 S.E.2d 734, 738 (2014) ("[T]he issue of [the father's] ability to pay is addressed and resolved by the fact that he was subject to a child support order that required him to pay $50 per month for the benefit of his children.").

In this case, the trial court's order found:

> 34. The minor child has been placed in the custody of the Department and is residing in a licensed foster care placement, and Respondent mother . . ., for a continuous period of six months next preceding of March 18, 2016, ha[s] willfully failed for such a period to pay a reasonable portion of the cost of care for the minor child despite being physically and financially able to do so. Specifically, Respondent mother has the ability to earn an amount greater than zero and to provide for the support of the minor child. She has paid an extremely nominal amount

> for the benefit of the minor child since the minor child came into the custody of the Department, approximately $64.00 in child support paid. . . . The Department has provided a cost of care for the minor child in the amount of at least $40,888.00, in addition to the Medicaid provided by the Department.

Respondent-mother challenges this finding to the extent it states she had the ability to pay for Susan's care. She notes she was unemployed for the six months prior to the filing of the petition and argues the trial court "failed to actually analyze [respondent-mother]'s financial resources and reasonable expenditures, if any, during the relevant six months, and thus determine her actual ability to pay support or not."

However, as noted above, the trial court was not required to perform the analysis suggested by respondent-mother because, during the six months prior to the filing of the petition, respondent-mother was subject to a valid child support order. *See id.* at 296, 761 S.E.2d at 738. During the termination hearing, the supervisor of the Caldwell County Child Support Enforcement Agency testified as follows:

> [DSS]: Okay. If you can go back and discuss if [respondent-mother] entered into a child support agreement for the child [Susan] and when she did so.
>
> . . . .
>
> [Witness]: We established a temporary order with her that was effective for May 1, 2015 for a $50.00 a month order as well as a $10.00 a month payment to the arrears. At that time the arrears were $500.00.

[DSS]: Okay. And was that arrears foster care monies that were owed if you know?

. . . .

[Witness]: It just says it[']s for past paid public assistance.

. . . .

[DSS]: Okay. Past paid public assistance. Okay. And then after that temporary custody order was entered, did at some point a permanent - I'm sorry, temporary child support order was entered, did at some point a permanent child support order - was that entered?

[Witness]: Yes.

[DSS]: Okay when did that occur?

[Witness]: Looks like August 5, 2015. Was signed by –

. . . .

It was signed August 5, 2015.

[DSS]: Okay. And that - when you say signed by it means by a judge?

[Witness]: By a judge.

[DSS]: A judge signed those child support orders.

[Witness]: Yes.

[DSS]: Okay. And what was that child support order?

[Witness]: It continued to be $50.00 per month and $10.00 to the arrears.

[DSS]: Okay. When the - I don't know if this will be the same answer or a different answer but when the temporary child support order was entered and the permanent child support order was entered requiring her to pay $50.00 a month and ongoing child support, what was her income that that was based on? If any?

[Witness]: She had a job at that time earning $714.84 working at Captain D's. That's the income that was used on the worksheet.

[DSS]: Okay. And did that - the $714, is that per month?

[Witness]: Yes. $714.84 per month.

[DSS]: Okay. And is that when the temporary order was entered or the permanent one?

[Witness]: That's the permanent order. The temporary order she didn't have any income so there was 0 (zero) amount used on that worksheet. And she was ordered - also ordered to do job searches. And when she came back she had a job at Captain D's. And the permanent order started - it looks like July 1st - it is July 1, 2015.

THE COURT: I'm sorry, was it 2015?

[Witness]: I'm sorry. Yes it was 2015.

[DSS]: Okay. And so after both the temporary child support order was entered and the permanent child support order was entered; you said she's made two (2) payments. When did she make those two (2) payments?

[Witness]: The first payment was August 26, 2015 of $55.38. The second payment was September 24, 2015 for $8.71. Both were wage withholding payments.

> [DSS]: Okay. Besides those two (2) payments, at any time since May 1, 2015 has she made any other child support payments?
>
> [Witness]: No.

Thus, the evidence shows that in the six months prior to the filing of the termination motion, respondent-mother was subject to a valid child support order requiring her to pay $50.00 per month plus $10.00 per month in arrearages. Respondent-mother failed to pay that amount, instead only making one payment of $8.71. The child support order demonstrates that respondent-mother had the ability to pay a reasonable portion of Susan's care, but failed to do so. *Id.* at 296, 761 S.E.2d at 738.

Therefore, the trial court properly concluded respondent-mother's parental rights were subject to termination on the ground respondent-mother willfully failed to pay a reasonable portion of Susan's cost of care. Since we have found termination on this ground was proper, we need not consider respondent-mother's arguments regarding the remaining four grounds found by the trial court. *See In re S.C.H.*, 199 N.C. App. 658, 661, 682 S.E.2d 469, 471 (2009), *aff'd per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010). The trial court's order is affirmed.

AFFIRMED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).