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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-978

Filed: 6 March 2018

Cumberland County, No. 12 JT 332

IN THE MATTER OF: B.L.A.

Appeal by respondent from order entered 26 May 2017 by Judge Cheri Siler Mack in District Court, Cumberland County. Heard in the Court of Appeals 22 February 2018.

Elizabeth Kennedy-Gurnee, for petitioner-appellee Cumberland County Department of Social Services.

Lisa Anne Wagner, for respondent-appellant.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Jackson W. Moore, Jr., for guardian ad litem.

STROUD, Judge.

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

I. Background

On 24 August 2011, the Harnett County Department of Social Services (“Harnett DSS”) filed a petition alleging that Brett¹ was an abused and neglected juvenile. Harnett DSS filed an amended petition the same day adding that Brett was also a dependent juvenile. Harnett DSS stated that it began working with respondent on 10 May 2011. DSS alleged that Brett, who was only three years old, had previously gotten out of the home on at least two occasions without respondent’s knowledge, and was found wandering around the neighborhood and trying to get into neighbors’ pools. DSS claimed that respondent had unstable living arrangements because respondent was homeless. DSS also alleged Brett was not receiving proper care and supervision, and respondent was unable to make an appropriate plan of care for Brett and was difficult to contact.

Harnett DSS further alleged that Brett was sexually abused. Respondent agreed to a safety plan in which the man accused of sexually abusing Brett would have no contact with Brett, but respondent had left Brett in the man’s care for three days. Last, Harnett DSS expressed concern that respondent might have mental health issues, but further assessment was needed. Harnett DSS obtained nonsecure custody of Brett. On 2 December 2011, the district court adjudicated Brett neglected and dependent, and the district court established a permanent plan of reunification. On 23 May 2012, the case was transferred to Cumberland County.

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading.

In January of 2014, the district court entered a permanency planning review order in which it removed reunification as a permanent plan for Brett. The district court changed the permanent plans for Brett to concurrent plans of adoption and custody with a court-approved caretaker. In July of 2015, the Cumberland County Department of Social Services (“Cumberland DSS”) filed a petition to terminate respondent’s parental rights. On 26 May 2017, the district court entered an order in which it determined that grounds existed to terminate respondent’s parental rights due to neglect, willful failure to make reasonable progress, dependency, and willful abandonment. The district court further concluded that it was in Brett’s best interests that respondent’s parental rights be terminated. The district court terminated respondent’s parental rights. Respondent appeals.

II. Reasonable Progress

Respondent argues that the district court erred by concluding that grounds existed to terminate her parental rights. “The standard of appellate review is whether the district 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). N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights, and a finding on any one of the separately enumerated grounds will support termination. *See* N.C. Gen. Stat. § 7B-1111 (2017).

Here, the district court concluded that grounds existed to terminate respondent's parental rights under North Carolina General Statute § 7B-1111(a)(2).

[T]o find grounds to terminate a parent's rights under G.S. § 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 a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and, further, that as of the time of the hearing, as demonstrated by clear, cogent and convincing evidence, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child. Evidence and findings which support a determination of reasonable progress may parallel or differ from that which supports the determination of willfulness in leaving the child in placement outside the home.

A finding of willfulness does not require a showing of fault by the parent.

In re O.C., 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005) (citations and quotation marks omitted).

While respondent challenges some findings of fact, we need not review each and every finding of fact as even if erroneous, "erroneous findings unnecessary to the determination do not constitute reversible error." *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). The district court found:

27. On March 3, 2012, Respondent Mother completed a psychological evaluation with David Holbein Rademacher, MA LPA LPC NCP. During the evaluation Respondent Mother made a fantastical self report of achieving a doctoral degree and was a licensed clinical psychologist with many years of experience. The diagnosis given at the conclusion of

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said evaluation were Adjustment Disorder with Mixed Depression and Anxiety, Rule out Conversion Disorder, Rule out Anxiety Disorder not otherwise specified, and Antisocial Personality Disorder with Narcissistic features. Pursuant to findings in the court order filed on October 24, 2012, Respondent Mother believed that being homeless and pregnant at the time affected the outcome of the psychological evaluation.

28. On September 26, 2012, the Cumberland County Department of Social Services requested a second psychological evaluation be completed on the Respondent Mother due to the Respondent Mother believing that the outcome of the evaluation was affected by her homelessness and being pregnant. The Court did in fact order a second evaluation in order to obtain accurate diagnoses. This Court incorporates the findings from the Permanency Planning Order in 12 JA 332, rendered on September 26, 2012, and filed on October 24, 2012, and the Permanency Planning Order rendered on April 2, 2013, and filed on June 7, 2013.
29. On or about March 1, 2014, Respondent Mother completed a second psychological evaluation and parenting assessment with Genell Rashad, Staff Psychologist II, MA, LPA, HSP-PA. Ms. Rashad was tendered as an expert witness in evaluations, and said evaluation was entered into evidence as Cumberland County Department of Social Services' Exhibit #1. The evaluative procedures included interviews with Respondent Mother and a social worker from the Cumberland County Department of Social Services, various testing, and reviewing of records. During the evaluation, Respondent Mother stated that she was physically and verbally abused by her father as a child and that she was raped when she was 10 years old, and again when she was 14 or 16 years old. She stated that she received mental

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health counseling at the ages of 7, 9, and 10 years due to her relationship with her father. [Respondent-mother] exhibited fantasy ideation and exaggerated fabrications in her conversations with Ms. Rashad in that she claimed to be an athlete as a teenager while she weighed 400 pounds. Ms. Rashad concluded that this is probably a product of Respondent Mother's histrionic personality and an attempt to uplift her self-esteem. Ms. Rashad further concluded that Respondent Mother has a dysfunctional thinking style that is a key component in her poor decision making, and this continues her cycle of poor choices; Ms. Rashad further stated that her history indicates that she has not learned from past experiences or through vicarious learning. Her chronic depressive symptom and personality characteristics may have contributed to this.

30. As a result of the evaluation completed with Genell Rashad, Respondent Mother was diagnosed with Dysthymia, and Depressive, Self-Defeating, and Histrionic Personality Traits. Ms. Rashad recommended the following:
 - a. Respondent Mother engage in in-patient treatment for Dysthymia – in-patient was recommended because Respondent Mother was homeless at the time;
 - b. Respondent Mother engage in vocational rehabilitation;
 - c. Respondent Mother engage in individual therapy with cognitive behavioral and trauma focused components; and
 - d. Ms. Rashad also stated that psychotropic medication would benefit Respondent Mother.

....

32. Respondent Mother has not continuously engaged in mental health treatment or counseling although she has had ample opportunity to do so from the time

[Brett] was taken into care.

33. During the course of the underlying case, mental health services were always available to the Respondent Mother, and the Cumberland County Department of Social Services made referrals and kept the Respondent Mother informed as to the services available to her. Mental health services were available while Respondent Mother had Medicaid and under IPRS (Integrated Payment and Reporting System) funding after her Medicaid was terminated.

....

36. Respondent Mother completed parenting classes; however, after completion, she failed to demonstrate that she could apply what she was taught in the classes in that she told [Brett] that she had a room set up for him at home when in fact she was still living in a tent.
37. Housing has been a significant issue for the Respondent Mother for a number of years. Respondent Mother's mental health issues, as well as various other reasons have [contributed] to the Respondent Mother's homelessness. The Court has previously found, and finds again on today's date, that this case, and the underlying case, are about more than just the homelessness of the Respondent Mother. The Respondent Mother has a history of making unwise decisions that have contributed to her not being able to provide appropriate care for . . . [Brett].

....

39. The Petition in this action was filed on July 14, 2015. The Respondent Mother had not obtained and maintained stable housing at the time this action

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was filed. However, she had obtained stable employment.

. . . .

41. After she obtained full-time employment, the Respondent Mother continued to live in a tent, in motels, or with other people for brief periods of time.
42. On 23 November, 2015, the Respondent Mother moved into a residence . . . in Fayetteville, North Carolina. She continues to reside at that address at this time, and she has resided at that address continuously since that time.

The quoted findings are unchallenged, and thus binding on this Court. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

The crux of respondent's arguments on appeal is that her mental health issues were not the reason for Brett's removal, so the district court erred in basing termination of her parental rights on her failure to correct this condition. But even if the petition did not specifically identify respondent's mental health as an underlying cause of neglect which led to the filing of the initial petition and the petition to terminate, the petition, evidence, and findings show respondent's mental health issues were a concern from the beginning of the case. For example, many different things may cause a person to become homeless, such as loss of a job, eviction, foreclosure, destruction of the home by fire, substance abuse, or mental illness. Even if homelessness is the immediate reason for removal of the child, the underlying cause of the homelessness is still a condition a parent would need to correct, and some

causes are much easier to correct than others. The unchallenged findings demonstrate that respondent failed to correct the conditions which led to Brett's removal by failing to address her mental health issues.

In addition to respondent's mental health issues, the district court's findings demonstrate that respondent made limited progress towards correcting many of the other conditions which led to Brett's removal from her care. Although respondent completed a parenting class, she was unable to demonstrate that she could apply the skills learned in the class. Also, while respondent has made some progress, this Court has repeatedly emphasized that "extremely 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) (citation, quotation marks, and brackets omitted). We conclude that the district court properly determined that respondent failed to make reasonable progress towards correcting the conditions which led to the removal of her child. Accordingly, we hold that the district court did not err in concluding that grounds existed to terminate respondent's parental rights.

III. Best Interests

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Respondent also argues that the district court abused its discretion when it determined that termination of her parental rights was in Brett's best interest. After an adjudication finding a ground for termination, the district court must determine the child's best interests, which includes consideration of:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (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) (2017). This Court reviews the district court's best interests determination to ultimately terminate parental rights for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

Here, the district court found unchallenged, and thus binding, *see Koufman*, 330 N.C. at 97, 408 S.E.2d at 731:

4. That . . . [Brett] is nine (9) years old. He will turn ten (10) in September, 2017.
5. That the likelihood of adoption is great. Even though [Brett] is not currently in a potential adoptive placement, the likelihood that an adoptive

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placement will be located is high. . . . [Brett] is a very bright, loving, smart, witty, likeable, sociable, and personable little boy. He does have some mental health issues; however, his issues are manageable.

6. The permanent plan for . . . [Brett] is adoption. This plan has previously been approved by the Court. That the entry of an order terminating the parental rights of the Respondents would aid in the accomplishment of that plan and is necessary in order to complete that plan.

. . . .

8. As to the bond between . . . [Brett] and the Respondent Mother, the Court finds that . . . [Brett] has memory of his mother as he was older when he was removed from her care. As late as February 20, 2017, . . . [Brett] expressed to his therapist that he would like to live with his mother; however, he was worried that they would have the same problems as before. When he speaks of his mother, he refers to her by [her first name].
9. As to the bond between . . . [Brett] and his prospective adoptive parent, the Court finds at this time there is no prospective adoptive parent. However, . . . [Brett] has the ability to bond, and has previously been extremely bonded to a prior caregiver and potential adoptive parent. Unfortunately, that caretaker passed away.
10. The Respondent Mother has presented to the Court [Mr. and Mrs. Pike] as potential adoptive parents for . . . [Brett]. In fact, the Respondent Mother expressed a willingness to sign a Specific Relinquishment to [Mr. and Mrs. Pike]. [Mr. and Mrs. Pike] are currently engaged in MAPP Classes in an effort to begin the process of becoming adoptive parents. They attended their first class of ten last

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week. The Court has encouraged the Department to strongly consider [Mr. and Mrs. Pike] as a potential adoptive placement for . . . [Brett].

11. The Respondent Mother still has not addressed her mental health needs on a consistent basis. The Court finds this significant in that this is the main issue that [led] to the removal of . . . [Brett] from the home, as well as [Brett] also suffers from mental health issues.

12. . . . [Brett] is in need of permanence.

Respondent contends that the district court failed to give proper consideration to the strong bond between her and Brett, and properly considering that bond, the district court should protect Brett from unnecessary severance of his relationship with his mother. Respondent further notes that the bond is especially important given the death of Brett's caretaker. However, the district court did give consideration to Brett's bond with respondent. The findings also show the district court considered that Brett's potential adoptive placement had passed away. But upon considering other factors, the district court determined that termination was still in Brett's best interests. The district court found that Brett was in need of permanence, that respondent still had not satisfactorily addressed her mental health issues, and that termination was necessary to accomplish the permanent plan of adoption. We conclude that the district court's findings sufficiently demonstrate that it considered the statutory factors in North Carolina General Statute § 7B-1110(a), including Brett's bond with respondent, and we cannot say the district court abused

its discretion in determining it was in Brett's best interests that respondent's parental rights be terminated. Because the district court properly terminated respondent's parental rights for failure to make reasonable progress, we need not consider respondent's other issues on appeal. *See* N.C. Gen. Stat. § 7B-1111 (2017).

IV. Conclusion

We affirm the district court's order terminating respondent's parental rights.

AFFIRMED.

Chief Judge McGEE and Judge BRYANT concur.

Report per Rule 30(e).