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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1010

Filed: 20 March 2018

Randolph County, Nos. 16 JT 3-6

IN THE MATTER OF: C.L., J.L., M.L., Jr., and H.L.

Appeal by Respondent-Mother from order entered 19 June 2017 by Judge Lee W. Gavin in District Court, Randolph County. Heard in the Court of Appeals 22 February 2018.

Chrystal S. Kay for Randolph County Department of Social Services, Petitioner-Appellee.

Assistant Appellate Defender Annick Lenoir-Peek for Respondent-Appellant Mother.

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

McGEE, Chief Judge.

Respondent-Mother ("Respondent") appeals from an order terminating her parental rights to her children, C.L., J.L., M.L., Jr., and H.L. (together, "the children"). We affirm.

I. Background

The Randolph County Department of Social Services ("DSS") received a report on 28 October 2014 that Respondent and the children's father (collectively, "the parents") were abusing substances and not providing the children with appropriate care and supervision. Upon further investigation, DSS determined the parents were abusing pain medication and marijuana, and that their home had no running water and very little food. Respondent was also found to be in need of mental health services. DSS initially provided in-home services to the family. One of Respondent's children has spina bifida, a congenital birth defect, and "significant physical and cognitive disabilities." DSS received a report that, on 6 January 2016, witnesses observed Respondent's boyfriend punch the child with special needs in the face and "roughly throw" the child's walker.

DSS filed petitions on 7 January 2016 alleging that the child with special needs was an abused juvenile and that all four children were neglected juveniles. In addition to the alleged physical abuse of the child with special needs, DSS alleged Respondent had not completed the recommended in-home services and that the children lived in an environment injurious to their welfare and did not receive proper care, supervision, or discipline. DSS did not seek non-secure custody of the children at that time because Respondent agreed to place the children in the home of her maternal aunt and uncle. Two weeks after the placement, however, Respondent's aunt and uncle informed DSS that their financial situation had changed and they

were no longer willing to provide care for the children. DSS obtained non-secure custody of the children on 21 January 2016 and filed additional petitions alleging the children were dependent juveniles. The trial court held hearings on the continued need for non-secure custody on 27 January 2016 and 3 February 2016 and entered orders[1] continuing DSS custody pending an adjudication and dispositional hearing.

Respondent stipulated to facts supporting an adjudication of neglect of the children on 2 March 2016. After a hearing on 9 March 2016, the trial court entered a consolidated adjudication and disposition order on 6 April 2016 that concluded the children were neglected juveniles. The court continued custody of the children with DSS and directed Respondent to: (1) obtain and maintain a verifiable income to support herself and the children; (2) obtain and maintain appropriate housing; (3) submit to a psychological evaluation and follow all recommendations; (4) participate in and complete parenting classes and demonstrate skills learned; (5) participate in a domestic violence support group; and (6) participate in and complete substance abuse treatment.

The trial court held a review hearing on 17 August 2016. It entered an order on 7 September 2016 finding that, while Respondent had recently obtained employment, her living arrangements remained unstable. The court found that Respondent was prescribed medication for the treatment of depression and anxiety

[1] The orders continuing non-secure custody of the children were entered on 22 and 29 February 2016, respectively.

following a psychological evaluation in 2014, but "reported . . . that she [was] no longer taking any medication." The court further found that Respondent began substance abuse treatment on 13 January 2016, but DSS had been unable to verify whether Respondent had attended any treatment sessions since 18 May 2016. Additionally, the court noted Respondent had: (1) tested positive for controlled substances multiple times since DSS became involved in the case; (2) failed to submit to the agency's two most recent requests for random drug tests; and (3) admitted to smoking marijuana shortly before 15 June 2016.

Respondent initially engaged in a domestic violence support group but "missed too many classes" to complete the ten-week program and last attended domestic violence counseling on 12 April 2016. Similarly, Respondent was not actively engaged in parenting classes because she had missed too many classes. Respondent's attendance at supervised visits with the children had been "sporadic," although she did inform DSS in advance if she could not attend. The trial court continued custody of the children with DSS, ordered DSS to continue to make reasonable efforts to return the children to Respondent, and directed Respondent to work toward accomplishing the plan established in the initial adjudication and disposition order.

The trial court entered a permanency planning order on 21 December 2016 ceasing reunification efforts and setting the primary permanent plan for the children as adoption, with a secondary plan of guardianship. The court stated that for

reunification to occur, Respondent "need[ed] to correct the conditions of substance abuse, unsafe or inappropriate parenting, a lack of safe and stable housing, a lack of income to meet the children's needs, domestic violence, untreated mental illness, and [Respondent's] pattern of poor judgment and unsafe decision making." The court found that Respondent was unemployed and had no income sufficient to meet the children's basic needs. Respondent had been living in her current residence for "a few months," and, during a recent home visit, a DSS social worker had observed signs of a possible mice infestation. Although Respondent completed a psychological evaluation in August 2016, she had not yet complied with any of its recommendations. Respondent had not completed a parenting education program, domestic violence counseling, or substance abuse treatment. The court further found that Respondent tested positive for marijuana on 17 August 2016 and was charged with misdemeanor possession of marijuana on 22 September 2016. The court concluded Respondent had only "minimally participated in the services and activities that were ordered" and had not made adequate progress in addressing the conditions that led to the children's removal and placement with DSS. It determined reunification efforts should cease.

DSS filed motions to terminate Respondent's parental rights on 22 March 2017. DSS alleged grounds existed to terminate Respondent's parental rights based on: (1) neglect of the children; (2) willfully leaving the children in foster care for more than twelve months without showing reasonable progress toward correcting the

conditions that led to the removal of the children from Respondent's home; and (3) willful failure to pay a reasonable portion of the cost of care for the children while they were in DSS custody. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1)-(3) (2017).

The trial court held a termination of parental rights hearing on 17 May 2017. The court entered an order ("the TPR order") on 19 June 2017 terminating Respondent's parental rights with respect to all four children.[2] The court concluded all three grounds alleged by DSS existed to terminate Respondent's parental rights and that termination of her parental rights was in the children's best interest. Respondent appeals.

II. Respondent's Appeal

Respondent argues the trial court erred by terminating her parental rights on the grounds alleged by DSS, and further abused its discretion in determining it was in the children's best interest to terminate her parental rights. We address each argument in turn.

A. *Standard of Review*

"The standard [of] 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 the trial court's findings of fact are

[2] The parental rights of the children's father were also terminated, but he has not appealed the TPR order.

supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (citation and internal quotation marks omitted). Findings of fact not specifically challenged on appeal "are deemed to be supported by sufficient evidence and are binding on appeal." *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). "The trial court's conclusions of law are fully reviewable *de novo* by the appellate court." *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation and internal quotation marks omitted).

B. *Analysis*

1. Grounds for Termination

Respondent contends the trial court erred in concluding, *inter alia*, that she willfully failed to pay a reasonable portion of the cost of care for the children while they were in DSS custody and foster care. We disagree.

A trial court may terminate parental rights upon finding that

> [a] juvenile has been placed in the custody of a county department of social services . . . 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 of care for the juvenile although physically and financially able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3) (2017). The "'cost of care' refers to the amount it costs [DSS] to care for the child, namely, foster care." *In re Montgomery*, 311 N.C. 101,

113, 316 S.E.2d 246, 254 (1984) (quotation marks omitted). "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). "Although [w]hat is within a parent's 'ability' to pay or what is within the 'means' of a parent to pay is a difficult standard which requires great flexibility in its application, the requirement of [N.C.G.S.] § 7B-1111(a)(3) applies irrespective of the parent's wealth or poverty." *In re T.D.P.*, 164 N.C. App. 287, 290, 595 S.E.2d 735, 738 (2004) (citation and internal quotation marks omitted) (first alteration in original). "[N]onpayment [] constitute[s] a failure to pay a 'reasonable portion' if and only if [the] respondent [was] able to pay some amount greater than zero." *In re Bradley*, 57 N.C. App. 475, 479, 291 S.E.2d 800, 802 (1982).

In the present case, Respondent asserts that certain findings of fact in the TPR order regarding her failure to pay child support "[were] either not accurate or [did] not support the [trial court's] conclusion of law that her failure to pay was willful." In support of its conclusion regarding Respondent's willful failure to pay the cost of the children's care, the trial court made the following pertinent findings of fact:

> 15. For the past year, [Respondent] has sporadically worked at Medo's Italian Restaurant in Asheboro, North Carolina. She worked at the restaurant in January 2016, from March to April 2016, and September to December 2016. She works an average of approximately thirty hours per week and earns $3.50 plus tips. When she works thirty hours per week, she brings home about $100-150 every two weeks. When she is able to work forty hours or more, she

brings home about $200-250 every two weeks.

. . . .

17. [Respondent] has also worked for the past two years cleaning homes. She gets jobs cleaning homes more than three to four times per month. She earns $50 per week from this employment, or approximately $200 to $250 per month cleaning houses.

18. [Respondent] returned to working at Medo's Italian Restaurant in February 2017 and is currently working there.

19. Although [Respondent] is pursuing a personal injury claim against Honda and the manufacturer of their seatbelts due to injuries she sustained in an automobile accident in November 2013, she worked during the majority of 2016, is currently working, and is seeking additional employment. During the relevant time period in this case, [Respondent] did not report she was unable to work due to disability or seek Social Security Disability.

20. [Respondent] is under a monthly child support obligation for the minor children.

21. Immediately prior to the start of the hearing today, May 17, 2017, [Respondent] paid $550 towards her back owed child support. [Respondent] acknowledged that she had taken out a loan within the past few days on her prospective recovery from her personal injury lawsuit. She used that money to pay her back child support.

22. Prior to today, May 17, 2017, [Respondent] had not made a payment toward her child support obligation and was in arrears in the amount of $550.

23. [Respondent] was physically and financially able to contribute some amount greater than $0 towards the cost of her children's care during the six months next preceding

the filing of the Motion to Terminate Parental Rights.

. . . .

25. When the case began in January 2016, [Respondent] was living with her grandmother. She has sporadically lived with her mother and her grandmother during the course of the case. . . . . [Respondent] has no formal agreement or arrangement to pay rent to her mother, stating she "helps [her mother] with money when [she] can," usually paying about $50 per month when she stays with her. [Respondent] has no formal agreement or arrangement to pay rent to her grandmother, stating she contributes by helping with cleaning and household chores when she stays in her grandmother's home.

. . . .

29. [Respondent] is currently residing with her mother, where she has been for several weeks.

. . . .

36. [Respondent] acknowledged in her testimony that she last used marijuana about a month ago. [Respondent] testified that, when she has the money, she will periodically spend about $20 on marijuana. [Respondent] stated that she experiences anxiety and depression and that things get hard for her. She smokes marijuana to relieve these feelings.

. . . .

76. . . . The relevant time period for the Court to consider pursuant to statute is six months prior to the filing of the Motion to Terminate Parental Rights on March 22, 2017. From January 2016 to May 17, 2017, encompassing that six month period and beyond, [Respondent] did not contribute any amount toward the cost of her children's care. [Respondent] was employed for the majority of 2016.

> She never reported to RCDSS that she had a disability that prevented her from working nor did she seek Social Security Disability Income. Literally immediately before the commencement of the Termination Proceedings today, [Respondent] Mother paid her back owed child support. This is not a reasonable contribution towards the cost of her children's care for the six months preceding the filing nor the more than twelve months they have been in [and] out of home placement. [Respondent] was physically and financially able to contribute some amount greater than $0 towards the cost of her children's care and willfully failed to do so.

Although Respondent contends that several of the above findings of fact are "not accurate," she does not specifically challenge any of the findings as unsupported by sufficient evidence. These findings of facts are therefore binding on appeal. *See In re M.D.*, 200 N.C. App. at 43, 682 S.E.2d at 785 (citations omitted).

Respondent contends the trial court's conclusion regarding her willful failure to pay reasonable costs was unsupported by the above findings because she was unaware she was under an obligation to pay child support until shortly before the termination hearing. She observes that "[n]o child support order was entered into the record" and there was no testimony about (1) the monthly amount Respondent was obligated to pay or (2) the amount, if any, of Respondent's arrearage at the time DSS filed the motions to terminate her parental rights. Respondent further argues that: (1) she obtained an advancement loan and used it to pay her arrearage in full on the day of the termination hearing, demonstrating she did not willfully fail to pay child support; (2) the court failed to address her living expenses; and (3) her parental

rights were improperly terminated "due to poverty." Respondent's arguments are misplaced.

The trial court's findings established that Respondent: (1) "worked during the majority of 2016," and had earned income from several sources during the six-month period set forth in N.C.G.S. § 7B-1111(a)(3); (2) had limited living expenses; (3) testified at the termination hearing that she had been subject to a child support order but never made a payment until the day of the hearing; (4) acknowledged she owed an arrearage of $550.00 in child support; and (5) testified that, "when she ha[d] the money, she [would] periodically spend [it] . . . on marijuana." Although Respondent testified she "never . . . received a paper saying [she] owed back child support," a parent's lack of notice or knowledge of an obligation to pay child support does not excuse the failure to pay reasonable costs. *See In re T.D.P.*, 164 N.C. App. at 289, 595 S.E.2d at 737 (citation omitted); *see also In re Biggers*, 50 N.C. App. 332, 339, 274 S.E.2d 236, 241 (1981) ("All parents have the duty to support their children within their means[.]"). Additionally, Respondent acknowledged in her testimony that she "was told before that [she] might have to pay child support."

The trial court's findings of fact thus showed Respondent had the ability to pay "some amount greater than $0" towards the cost of the children's care during the relevant statutory period and chose not to do so. Accordingly, we hold that the trial court's findings supported its conclusion that grounds existed to terminate

Respondent's parental rights under N.C.G.S. § 7B-1111(a)(3). Because we affirm the termination of Respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(3), we do not reach Respondent's arguments with respect to the grounds set forth in N.C.G.S. §§ 7B-1111(a)(1)-(2). *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) ("[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds." (citation and internal quotation marks omitted)).

2. Best Interest Determination

Respondent also argues the trial court abused its discretion in determining it was in the children's best interest to terminate her parental rights. We disagree.

"After an adjudication that one or more grounds for terminating a parent's rights exist, the [trial] court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2017). In making this determination, the court must consider the criteria set forth in N.C.G.S. § 7B-1110, including: (1) the juvenile's age; (2) the likelihood of adoption of the juvenile; (3) whether termination will help to accomplish the permanent plan for the juvenile; (4) the bond between the juvenile and the parent; (5) the quality of any relationship between the juvenile and any potential adoptive parent, guardian, or custodian; and

(6) "[a]ny [other] relevant consideration." *See* N.C.G.S. §§ 7B-1110(a)(1)-(6). A trial court's conclusion that termination is in the best interest of the children will not be overturned on appeal absent an abuse of discretion. *See In re R.B.B.*, 187 N.C. App. 639, 648, 654 S.E.2d 514, 521 (2007) (citation omitted). "Abuse of discretion exists when the challenged actions are manifestly unsupported by reason." *Id.* (citation and quotation marks omitted).

Respondent concedes the trial court addressed in its findings the factors set forth in N.C.G.S. §§ 7B-1110(a)(1)-(5), but contends the court "failed to consider one important [additional] relevant consideration: [that] the children have a strong bond with each other and [with] [Respondent]." According to Respondent, the trial court "did not consider how the bond between [the children] would be destroyed by their placement into three separate homes, which would fall into the default category of 'any relevant consideration' [under N.C.G.S. § 7B-1110(a)(6)]." Respondent has not directed this Court to anything in the record that indicates the bond between the children would be "destroyed" by terminating her parental rights. Moreover, we note that the trial court is required to hold post-termination review hearings, at which time the court must consider, *inter alia*, whether the children's current placements are in their best interest. *See* N.C. Gen. Stat. § 7B-908(c)(4) (2017).

Respondent also argues DSS has not complied with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351,

§ 206, 122 Stat. 3949, 3962 (2008), which requires DSS to make reasonable efforts to place siblings removed from their home in a joint placement, or, barring joint placement, to provide for frequent sibling visitation, unless it can demonstrate that joint placement or ongoing visitation would be contrary to any of the sibling's safety or well-being. Respondent points to no authority, however, requiring the trial court to make such provisions in an order terminating parental rights, and Respondent did not raise this argument before the trial court. Consequently, Respondent has waived review of this argument. *See* N.C.R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired[.]"); N.C.R. App. P. 28(b)(6) ("Issues . . . in support of which no reason or argument is stated[] will be taken as abandoned.").

In the present case, the trial court made numerous unchallenged findings of fact detailing the children's current placements and their bonds with their prospective adoptive parents. Although the trial court found the children had a bond with Respondent, it "weigh[ed] this bond against the other factors related to the children's best interests[,]" including that:

> [t]he minor children are all young, under the age of [ten]. [One of the children] has special needs which require consistent therapy and care, which he is receiving in his current placement. The children have been in [DSS] custody and in foster care placement for approximately fifteen months. All four children are in pre-adoptive

> homes. As found above, neither [Respondent nor the children's father] has made substantial progress in correcting the conditions that caused the children's removal and it is likely the children would live in ongoing conditions of neglect if returned to either parent.

We cannot say the trial court's determination is manifestly unsupported by reason, and we therefore hold that the court did not abuse its discretion in concluding termination of Respondent's parental rights was in the children's best interest. Accordingly, we affirm the trial court's order terminating Respondent's parental rights to the children.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).