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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1138

Filed: 5 June 2018

Wake County, Nos. 15 JT 303-04

IN THE MATTER OF: E.L.J. and M.D.J.

Appeal by respondent-mother from order entered 6 July 2017 by Judge Keith Gregory in Wake County District Court. Heard in the Court of Appeals 10 May 2018.

Office of the Wake County Attorney, by Mary Boyce Wells, for petitioner-appellee Wake County Human Services.

David A. Perez, for respondent-appellant mother.

Ellis & Winters LLP, by James M. Weiss, for guardian ad litem.

CALABRIA, Judge.

Respondent appeals from an order terminating her parental rights to her minor children E.L.J. ("Edward") and M.D.J. ("Mary").[1] We hold the trial court did not abuse its discretion in denying respondent's motion for a continuance and did not err in terminating her parental rights on the ground of failing to make reasonable

[1] We use pseudonyms throughout this opinion for ease of reading and to protect the juveniles' privacy.

progress toward correcting the conditions that led to the removal of the children from her care.

I. Factual and Procedural Background

On 12 October 2015, Wake County Human Services ("WCHS") filed a petition alleging that Edward and Mary were neglected juveniles, due to mental health and behavioral issues exhibited by the children and concerns that respondent was not adequately engaging in mental health services designed to assist Edward. WCHS obtained non-secure custody of the children that same day and placed them with their maternal grandmother. On 20 October 2015, WCHS filed an amended juvenile petition to correct allegations regarding the children's putative fathers.

After a hearing on 24 November 2015, the trial court entered a combined adjudication and disposition order on 8 January 2016. The court adjudicated the children to be neglected juveniles in that they: (1) did not receive proper care and supervision from their parents; (2) were not provided necessary medical care; (3) were not provided necessary remedial care; and (4) lived in an environment injurious to their welfare. The court's order relied in part on respondent's stipulations that she: (1) had not been compliant with treatment or medications for Edward's mental health diagnoses; (2) did not comply with recommended services for Mary's mental health diagnosis; and (3) refused to agree to a safety plan that service providers attempted to put into place for the children. The court continued custody of the children with

WCHS and ordered WCHS to continue making reasonable efforts to eliminate the need to place the children outside their home. Respondent was ordered to comply with her out-of-home family services agreement, which included: (1) attend biweekly supervised visitation with the children; (2) maintain housing and income sufficient for herself and the children; (3) complete a psychological evaluation and follow any recommendations; (4) complete a substance abuse assessment and follow any recommendations; (5) complete parenting education and demonstrate learned behaviors; and (6) maintain regular contact with WCHS and notify WCHS of any changes to her situation.

On 17 February 2016, the trial court conducted a placement review hearing. Although respondent was not present, the court found respondent had engaged in some services and regularly visited with Mary.[2] The court ordered WCHS to continue custody of the children, and to continue making reasonable efforts toward reunification. Respondent was ordered to comply with her services agreement.

When the trial court held a placement review and permanency planning hearing on 9 August 2016, respondent did not attend. In the court's order, filed 6 September 2016, adoption became the primary permanent plan for the children and reunification with a parent, the secondary plan. The court found that respondent had completed an assessment at the UNC Parent Evaluation Program in February 2016,

[2] Edward refused visitation with respondent throughout the juvenile case.

with five recommendations: (1) a psychological evaluation; (2) a psychiatric evaluation to determine the need for medication; (3) a substance abuse assessment; (4) parenting education; and (5) psychological education regarding trauma and physical and sexual abuse. Respondent completed a substance abuse assessment and was diagnosed with mild cannabis use disorder in sustained remission. Random drug screens were recommended, and she tested negative on 14 March 2016. Respondent also completed the recommended psychological evaluation on 13 April 2016 and consistently visited with Mary. However, respondent declined to participate in a psychiatric evaluation and had not participated in other services recommended from the assessments and evaluation. Ultimately, the court found:

> [Respondent was] not making adequate progress within a reasonable time under the plan in that [she was] not actively participating in or cooperating with the plan or Wake County Human Services. [Respondent had] not been available to the Court and [was] acting in a manner inconsistent with the health or safety of the children.

The court again ordered respondent to comply with her services agreement, and directed WCHS to "make reasonable efforts to place the children in a timely manner in accordance with the primary permanent plan of adoption and secondary plan of reunification with a parent[.]"

On 20 October 2016, WCHS filed a motion for termination of parental rights to the children. As to respondent, WCHS alleged grounds of neglect and failure to make reasonable progress to eliminate the conditions that led to the removal of the

children from her home.[3] *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2017). Following a three-day hearing, on 6 July 2017, the trial court entered an order terminating respondent's parental rights to Edward and Mary. The court found both grounds alleged in the motion and concluded that termination of respondent's parental rights was in the children's best interests. Respondent filed timely notice of appeal.

II. Motion to Continue

Respondent first argues the trial court abused its discretion by denying her oral motions to either hold the case open or continue the 30 May 2017 hearing. We disagree.

A. Standard of Review

" 'A trial court's decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation.' " *In re C.J.H.*, 240 N.C. App. 489, 492-93, 772 S.E.2d 82, 86 (2015) (quoting *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005)). " '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.' " *Id.* (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)). Moreover, "[c]ontinuances that extend beyond 90 days after

[3] WCHS also sought to terminate the parental rights of the fathers of the children, and the trial court so ordered, but the fathers are not parties to this appeal.

the initial [termination] petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance." N.C. Gen. Stat. § 7B-1109(d) (2017).

B. Analysis

In its order terminating respondent's parental rights, the trial court stated:

> The mother was noticed to be present at all these hearings but did not appear at the hearing of May 30, 2017. The mother is a resident of Raleigh, North Carolina and chose to go to Rocky Mount the day of the hearing. She reported at 12:25 to the social worker and her attorney that she had a flat tire in Rocky Mount and that her tire was fixed at 2:59 p.m. and that she was on her way to Court. She reported at 4:59 p.m. that the Courthouse was closed and that she could not get in to Court but the Courthouse does not close until 6 p.m. Less than five minutes earlier she reported that she was on Capital Boulevard near the mall and she could not have traveled this distance in such a short period of time. Rocky Mount is approximately 58 miles from the Wake County Courthouse and the mother never appeared for this hearing and Court did not adjourn until several minutes after five p.m. The mother's motion to continue the matter or to hold the matter open was denied.

Respondent argues the trial court abused its discretion in denying her motion to continue, because she was only absent due to unexpected exigent circumstances, and she contacted her counsel multiple times to give the court updates on her whereabouts and efforts to attend the hearing. Respondent contends her inability to

attend the hearing was due to "extraordinary circumstances" and the trial court thus abused its discretion in denying her motions to continue.

In the instant case, the petition to terminate respondent's parental rights was filed on 20 October 2016. The termination hearing, initially calendared for 26 January 2017, was continued to 7 April 2017 and then to 4 May 2017. The court held a hearing on 4 and 5 May 2017, but before petitioner could finish presenting evidence on grounds, the court had to continue the hearing until 30 May 2017. On the last day of the hearing, respondent had not yet testified. Respondent knew her counsel intended to call her to testify, but she had a flat tire. Raleigh is a two-hour drive from Rocky Mount, and respondent was told the courthouse would be closed and she could not get inside at 4:59 p.m.

This Court has held that "[w]hen . . . a parent is absent from a termination proceeding and the trial court preserves the adversarial nature of the proceeding by allowing the parent's counsel to cross examine witnesses, with the questions and answers being recorded, the parent must demonstrate some actual prejudice in order to prevail upon appeal." *In re Murphy*, 105 N.C. App. 651, 658, 414 S.E.2d 396, 400 (citation omitted), *aff'd per curiam*, 332 N.C. 663, 422 S.E.2d 577 (1992). We have further held that a parent's inability to testify, alone, is insufficient to show actual prejudice. *In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 858 (2017).

In *C.M.P.*, after the respondent-mother was inexplicably absent from the termination hearing, her attorney requested a continuance, which the trial court denied. ___ N.C. App. at ___, 803 S.E.2d at 856. On appeal, the respondent-mother argued that she was prejudiced by the trial court's ruling "because her presence at the hearing was essential for her attorney to present an adequate defense, and that she was not able to testify regarding her case plan progress and rebut evidence presented" by opposing counsel. *Id.* at ___, 803 S.E.2d at 858. However, we observed that

> [a]fter denying respondent's motion to continue, the trial court conducted a full hearing on the petition, heard testimony from several witnesses, and respondent's counsel was given full opportunity to cross-examine each witness. Indeed, respondent's counsel fully participated in the hearing by frequently objecting to testimony she deemed inadmissible, cross-examining witnesses, and presenting a closing argument on respondent's behalf. A court reporter also prepared a stenographic transcript of the hearing.

Id. at ___, 803 S.E.2d at 857. Since the respondent-mother had been served with a copy of the petition and received adequate notice of the hearing, " 'we s[aw] no possibility that [she] was unfairly surprised or that her ability to contest the petition to terminate was prejudiced.' " *Id.* at ___, 803 S.E.2d at 858 (quoting *In re Mitchell*, 148 N.C. App. 483, 487, 559 S.E.2d 237, 240, *rev'd on other grounds*, 356 N.C. 288, 570 S.E.2d 212 (2002)).

Here, although respondent had not yet testified and was delayed by a flat tire, her attorney was present at the hearing, made arguments, examined witnesses, and objected to the introduction of evidence. Respondent was aware that the hearing was in Raleigh, her city of residence, but nevertheless chose to travel to Rocky Mount on the day of the hearing. "Courts cannot permit parties to disregard the prompt administration of judicial matters. To hold otherwise would let parties determine for themselves when they wish to resolve judicial matters." *Id.* (quoting *Mitchell*, 148 N.C. App. at 488, 559 S.E.2d at 241). Therefore, as we held in *C.M.P.*, we hold that respondent has failed to meet her burden to show actual prejudice and the "extraordinary circumstances" necessary to justify a continuance of the termination hearing.

Despite respondent's arguments, we hold that the trial court's denial of her motions to continue is supported by reason, and that the trial court did not abuse its discretion in denying her motions to continue the hearing.

III. Termination of Parental Rights

Respondent next argues that the trial court erred in concluding grounds exist to terminate her parental rights because she willfully left the children in the custody of WCHS for more than twelve months without making reasonable progress in correcting the conditions which led to the removal of the children from her care. We disagree.

A. Standard of Review

This Court reviews orders terminating parental rights to determine "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 Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (citations and quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). The trial court's findings of fact that an appellant does not specifically dispute "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). However, "[t]he 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 quotation marks omitted), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

B. Analysis

A trial court may terminate parental rights where:

> The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

N.C. Gen. Stat. § 7B-1111(a)(2) (2017). Willfulness in this context may be proven by showing "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, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). "[A] finding of this ground may be made even when the parent has made some effort to regain custody of the child because the parent must also show *reasonable and positive progress* in correcting the conditions which led to the juvenile's removal." *In re J.L.H.*, 224 N.C. App. 25, 54, 741 S.E.2d 333, 335 (2012) (emphasis added).

Here, the trial court made the following findings of fact in support of its conclusion on this ground:

> 5. The children are in the legal custody of Wake County Human Services pursuant to orders of the Court in juvenile file #15 JA 303-304, and have been in such custody since October 12, 2015.
>
> . . . .
>
> 13. That the steps identified for the mother to take before the Court would consider the return of the children to her care were:
>
> -comply with the Visitation Agreement to regularly visit with the children
> -maintain housing and income sufficient for herself and the children
> -complete a psychological evaluation and follow any recommendations
> -complete a substance abuse assessment and follow any recommendations
> -complete an approved parenting education course and demonstrate learned behaviors

-maintain regular contact with the social worker at Wake County Human Services (WCHS).

14. The mother was referred to the UNC Parent Evaluation Program (PEP) for an assessment and was recommended to have a psychological evaluation, a psychiatric evaluation, dialectical behavioral therapy and parenting education.

15. The mother completed an approved parenting education course through the Safe Spaces program.

16. The mother has remained employed and has maintained stable housing.

17. The mother had a substance abuse assessment in March 2016 and was found to have Marijuana Use Disorder in Remission and recommended to have random drug screens. The mother acknowledge[d] that she did use marijuana on or around October or November 2016.

18. The mother submitted to a psychological evaluation and was diagnosed with Unspecified Bipolar Disorder and was recommended to have a psychiatric evaluation to determine if she could benefit from a mood stabilizer. The mother had difficulty completing the evaluation due to her being disruptive and aggressive and the mother's issues were noted to be severe and complex.

19. The mother attended some individual counseling but did not continue therapy once she had to pay for therapy.

20. [Edward] has not agreed to have visitation with his mother since he was placed in foster care. The mother consistently attended supervised visits with [Mary] but had difficulty with following the rules of visitation.

21. The mother has made statements to [Mary] such as "when you come home . . . ." and "Your friends in the neighborhood miss you" and these statements are

confusing and cause [Mary] anxiety. [Mary] has been diagnosed with Post Traumatic Stress Disorder and is participating in Trauma Focused Cognitive Behavioral Therapy and it has been made clear to the mother that such statements to [Mary] are not appropriate.

22. The mother also told [Mary] that she could not take [Mary] to get [Mary's] nails done because of what [Mary] told the Judge in Court at the February 6, 2017 hearing. There is often tension at the mother's visits after Court.

. . . .

24. The mother spoke with [Mary] around Christmas 2016 and [Mary] told her that she and [Edward] had been playing together and that they had both played Barbie dolls. The mother became very angry and indignant that [Mary] had played with dolls with [Edward] and stated it was wrong for [Edward] to play with dolls. The mother taught [Mary] to be verbally abusive to [Edward] and in this episode demonstrated that she still does not understand the inappropriateness of her conduct towards [Edward] and [Mary].

25. At recent visits [Mary] has stated that she does not want to go visit her mother and that she wants to stay with her grandmother. [Mary] loves her mother but is fearful of her mother and is afraid she may have to return to her mother's care.

26. The mother has demonstrated that she does not understand [Mary's] mental health and developmental needs in incidents such as these. [Mary] was diagnosed with Post Traumatic Stress Disorder in November 2015 and is participating in Trauma Focused Behavioral Therapy. [Mary] needs consistency and stability from her caregiver to progress in treatment and developmentally. [Mary] would be harmed by a lack of treatment or by being in the care of her mother because of the mother's unwillingness to accept her fault in the children being

removed from the home or acknowledge the harm that [Edward] and [Mary] suffered. The mother has always maintained that she does not need help.

27. The mother blames [Edward] for the children being removed. When [Edward] has behavioral problems she believes she is vindicated in how she responded and cared for [Edward] and [Mary].

28. The mother has verbally disparaged [Edward] for many years and she taught [Mary] to verbally abuse [Edward] as well. [Mary] will call [Edward] a "gay motherfucker" and [Edward] was often a target of verbal and physical abuse from his mother. [Mary] has often used the words "bitch," "ass," and "motherfucker" and she uses these words exactly as [her mother] does so that it is clear that [Mary] learned these words from [her mother].

. . . .

31. Children with PTSD need consistency and predictability and support. It is vital for the well being of the child for parents to be able to acknowledge the trauma that a child has suffered in such cases. Anyone providing care for a child with PTSD needs to be able to use strategies to reinforce the recovery of the child and to be able to verbalize how they would prevent a reoccurrence of the trauma. [Mary] has not felt safe with [the mother] being involved in her therapy.

. . . .

33. That the mother willfully left the children in foster care for more than twelve (12) months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting the conditions which led to the removal of the children. Poverty is not the sole reason that the mother is unable to care for the children.

> . . . .
>
> 47. That the conduct of the mother . . . has been such as to demonstrate that [she] will not promote the healthy and orderly, physical and emotional well being of the children.

Of these findings, respondent challenges #19, #24-#28, and #47 as being unsupported by clear, cogent, and convincing evidence.[4] The remaining unchallenged findings are binding on this Court.

Respondent first challenges the final portion of finding of fact 19, that she "did not continue therapy once she had to pay for therapy." According to respondent, this finding implies that she stopped therapy because she did not want to pay. Respondent asserts that she actually engaged in all the therapy that was provided to her, and she only stopped attending because she did not have health insurance and needed to wait until she was eligible for state financial assistance in order to cover the cost. Respondent ignores, however, that she was referred to dialectical behavioral therapy and refused to attend because it would be provided by someone other than her initial therapy provider. Respondent's initial therapy provider, Monique Goodson, was determined to be unable to provide the services that she needed. Nevertheless, respondent refused to see any therapy provider besides Ms. Goodson.

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[4] Respondent also challenges other findings of fact, but they are not necessary to this Court's holding and the arguments are not addressed in this opinion. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (stating that where there are "ample other findings of fact" to support a particular conclusion, "erroneous findings unnecessary to the determination do not constitute reversible error").

Respondent's therapy sessions with Ms. Goodson were limited by the financial assistance the State provided her; however, she refused to attend other recommended therapy sessions once her sessions with Ms. Goodson ended. Moreover, WCHS Christina Dillahunt testified that although respondent still had a few remaining sessions with her therapist that she could attend, she was "hang[ing] on to" them, even though her social worker recommended using them due to her inability to control her emotions during meetings. Respondent's challenge to finding of fact 19 is overruled.

Respondent next argues competent evidence does not support the portions of findings of fact 24 and 28 that she taught Mary to be verbally abusive toward Edward. These findings are supported by the testimony of respondent's mother, the children's grandmother, who testified that respondent taught Mary to insult Edward by calling him "gay" and taught her to use profanity which she directed toward Edward.

Respondent also challenges the portion of finding of fact 25 that Mary "is fearful of her mother." This finding is supported by the testimony of Mary's therapist and social worker, who stated that Mary had expressed she did not feel safe with respondent.

As to finding of fact 26, respondent argues there was no evidence she would not be supportive of Mary engaging in trauma-focused therapy. Finding of fact 26 ultimately finds that Mary would be harmed "by being in the care of her mother

because of the mother's unwillingness to accept" her behavior as the reason the children were removed from the home or acknowledge the harm that Edward and Mary suffered. "The mother has always maintained that she does not need help." This finding is focused on respondent's refusal to accept any responsibility for the harm Edward and Mary have suffered, which is supported by evidence through the testimony heard at the termination hearing.

Respondent argues finding of fact 27 is erroneous because she never indicated she was vindicated by Edward's continued behavior, but rather that Edward's continued problems demonstrated the severity of his previous issues. This finding is supported by testimony from the WCHS social worker:

> Q. And has - has mother - has [respondent] taken steps to be able to deal with those issues in [Edward]?
>
> A. Not Necessarily. Mom - she does inquire about how [Edward] is doing at the group home he's at. But [it's] more so - when I inform her [of] some of the new behaviors that he's dealing with, when I tell her these things it's the attitude more like I told you guys. You know, you didn't listen to me before. Not more so like well I'm glad he's getting the help he's needing now. [It's] more that – [it's] like a pointing the finger ordeal. You know, you guys blamed it all on me and now you see that he's still struggling with these issues.

In talking with the social worker, respondent did not merely express a recognition of Edward's continuing struggle with his previous problems, but rather adopted an "I-

told-you-so" attitude that expressed a sense of justification for not previously getting Edward the help he needed. This argument is overruled.

Respondent lastly challenges finding of fact 47, that "the conduct of the mother . . . has been such as to demonstrate that [she] will not promote the healthy and orderly, physical and emotional well being of the children[,]" because she had not been given an opportunity to address issues with either child in therapy. However, respondent's opportunity to address the children's issues in therapy is not controlling in regards to the evidence necessary to support this finding. At trial, there was repeated testimony that: (1) no substantial change had been observed in respondent's parenting style or demeanor around the children; (2) respondent never accepted responsibility for her actions leading to the children's issues, or acknowledged that her treatment of the children was wrong; and (3) respondent continued to exhibit behavioral problems herself. This testimony fully supports the court's finding that respondent's conduct demonstrated she would not promote the children's well-being.

We conclude the trial court's findings of fact show that although respondent nominally completed several aspects of her case plan, she failed to demonstrate the skills she learned and failed to show reasonable progress towards correcting the conditions that led to the children's removal from her care. Although respondent essentially "checked the boxes" of her case plan, demonstrating that she had the ability to make progress, she failed to admit her culpability in the children's removal

from her care and failed to show any insight into the children's mental health needs or that she would be able to help the children with their needs. Accordingly, we hold the trial court's findings of fact support its conclusion that grounds exist to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Because we hold the trial court did not err in concluding grounds exist to terminate respondent's parental rights on the ground of failure to make reasonable progress to eliminate the conditions that led to the removal of the children from her care, we do not address her arguments regarding the trial court's conclusion that grounds to terminate her parental rights also exist under N.C. Gen. Stat. § 7B-1111(a)(1). *See In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005), *aff'd per curiam*, 360 N.C. 360, 625 S.E.2d 779 (2006). Respondent has not challenged the trial court's conclusion that termination of her parental rights is in the children's best interests, and we affirm the court's order terminating her parental rights to Edward and Mary.

AFFIRMED.

Judges INMAN and ARROWOOD concur.

Report per Rule 30(e).