IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-160

Filed: 3 July 2018

Durham County, No. 15 JT 37, 38

IN THE MATTER OF: C.S. & D.A.

Appeal by respondent from order entered 15 September 2017 by Judge Doretta L. Walker in Durham County District Court. Heard in the Court of Appeals 6 June 2018.

Office of the Durham County Attorney, by Cathy L. Moore, and Polanco Law, P.C., by Benjamin J. Kull, for petitioners-appellees Durham County Department of Social Services and Guardian Ad Litem.

Rebekah W. Davis for respondent-appellant.

ZACHARY, Judge.

Respondent appeals from an order terminating her parental rights to her minor children, "Chloe" and "Denise."[1] After careful review, we affirm.

Background

Appellant-mother is the mother of Chloe and Denise, as well as three other children who "were placed in the guardianship of [their grandmother] in 2008 due to

[1] For ease of reading and to protect the children's privacy, we refer to them by the pseudonyms Chloe and Denise.

adjudication of neglect . . . ." Chloe's father is unknown. Denise's father is appellant-mother's husband, but he has not appealed the trial court's order terminating his parental rights.

In a July 2015 order, Chloe and Denise were adjudicated neglected by the trial court, but remained in appellant-mother's legal custody "provided she complie[d] with court ordered protection plan." In its order, the trial court found that there were two instances in which the children were left home alone and that "[b]oth children were under the age of five at the time of each incident." The trial court also found that Chloe, "who has sickle cell anemia, was not being taken to her hematology appointments and had missed appointments." As the trial court noted, "[s]ickle cell anemia is a life threatening illness which requires constant monitoring." The trial court ordered appellant-mother as follows:

> the mother shall ensure [Chloe's] medical needs are met, including but not limited to attending [Chloe's] hematology appointments as scheduled and complying with treatment recommendations, including but not limited to obtaining dental care and following through with ordered tests; the mother shall attend mental health therapy and maintain her medical management; and comply with prior court orders, specifically with substance abuse treatment recommendations, maintain stable employment or income, maintain stable housing, demonstrate ability to budget by paying rent and utility bills on time, provide her complete budget (all income and all expenses) in order to work on a budget with her. The mother shall submit to random drug tests as least once per month, and any positive result for a substance other than methadone shall be reported to this court.

The court also ordered that there "be no smoking or pets in the home where the children live."

On 15 November 2015, the trial court entered a review order in which Chloe and Denise were "placed in the care and custody of Durham DSS . . . ." The girls were placed in foster care with Ms. Armstrong, a distant cousin that the parents recommended for placement. On 20 September 2016, the trial court entered a permanency planning hearing order in which the court ordered a permanent plan of adoption with an alternative plan of reunification. The court ordered that appellant-mother "shall take the necessary actions to correct the conditions which led to the removal of the children, specifically:"

> a. follow mental health treatment recommendations;
> b. follow substance abuse treatment recommendations and make her own appointments, and be substance free;
> c. ensure that BAART and Carolina Behavioral Care are authorized to share information and coordinate her care and inform all service providers of all the medication she takes;
> d. submit to random, full-panel drug screens;
> e. maintain stable employment or income;
> f. maintain stable housing and allow Durham DSS access to her home;
> g. demonstrate ability to budget by paying rent and utility bills on time and providing pay stubs and copies of payment of bills;
> h. demonstrate willingness and ability to parent through supervised visits; []
> i. assist in identifying the father of [Chloe]; [and]
> j. sign consents for release of treatment information.

When the termination of parental rights hearing occurred, the children had been in foster care for nearly two years. After the hearing, the trial court entered an order terminating the parental rights of appellant-mother and her husband, Denise's father, pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) (neglect), 7B-1111(a)(2) (failure to make reasonable progress to correct the conditions which led to the children's removal), 7B-1111(a)(3) (failure to pay child support), and 7B-1111(a)(6) (dependency) (2017). Appellant-mother now appeals.

Standard of Review

Termination of parental rights proceedings involve two distinct stages: adjudication and disposition. *In re D.H.*, 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014). At "the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)." *Id*. (citation omitted); *see also* N.C. Gen. Stat. § 7B-1109(e) (2017). "The standard for review in termination of parental rights cases is whether the court's 'findings of fact are based upon clear, cogent and convincing evidence' and whether the 'findings support the conclusions of law.' " *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000) (quoting *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996)). "Clear, cogent and convincing describes an evidentiary standard stricter than a preponderance of the evidence, but less stringent than proof beyond a

reasonable doubt." *In re Nesbitt*, 147 N.C. App. 349, 355, 555 S.E.2d 659, 664 (2001) (citations omitted).

Discussion

On appeal, appellant-mother argues, *inter alia*, that the trial court erred when it concluded that grounds existed to terminate appellant-mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2017). We disagree.

Parental rights may be terminated upon a finding of the trial court that:

> 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). A two-part analysis is required, by which the "trial court must find by clear, cogent, and convincing evidence that: (1) the parent willfully left the child . . . in foster care or placement outside the home for more than twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child[.]" *In re C.G.A.M.*, 193 N.C. App. 386, 391, 671 S.E.2d 1, 5 (2008). "Willfulness under this section is less than willful abandonment, and does not require a finding of fault [by the parent]." *In re Clark*, 159 N.C. App. 75, 83, 582 S.E.2d 657, 662 (2003) (citation

omitted). "Willfulness may be found where even though a parent has made some attempt to regain custody of the child, the parent has failed to show reasonable progress or a positive response to the diligent efforts of DSS." *Id.* at 84, 582 S.E.2d at 662 (citation and quotation marks omitted). "[A] parent's prolonged inability to improve his or her situation, despite some efforts and good intentions, will support a conclusion of lack of reasonable progress." *In re C.M.S.*, 184 N.C. App. 488, 494, 646 S.E.2d 592, 596 (2007) (citing *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004)). "Extremely limited progress is not reasonable progress." *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 224-25 (1995).

In the present case, appellant-mother essentially argues that she had made reasonable progress toward correcting the conditions that led to the children's removal and placement in foster care nearly two years prior to the hearing, and specifically challenges the following findings of fact:

> 9. The Court finds that the parents did not take the orders of the Court seriously until the termination of parental rights pleading was filed. The Court is not going to belittle what they have done, because they have done some things; however, the problems remain. Each of the alleged grounds have been proven.
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> . . .
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> 14. During the course of the hearing on this matter, the Court kept listening for evidence of the mother's mental health treatment. The Court heard evidence from BAART and CAPS 4 U and reviewed the records Petitioner's 5, 5a, 5b, 5c and 13, which were basically the same except for

BAART providing methadone. Neither provider was focused on mental health consultation. Perhaps 10% was for mental health issues in respect to substance abuse. Other diagnoses were not addressed.

15. The treatment recommendations of Carolina Outreach, a mental health services provider, were not completed. They were not followed except for substance abuse recommendations. The recommendations regarding other diagnoses of PTSD, BiPolar disorder, anxiety, and depression remain undone.

16. BAART staff seemed to think that the mother is complying with what they asked of her because she is so engaging and they appear to like her. The Court finds that they were more complimentary than should have been and have overstated her progress. This is apparent from Ms Swartz's testimony which listed the 8 factors looked at for whether to have "take home" doses. Clinical judgment was listed as a factor. DSS involvement would also be a critical factor, because the stressors were considered too great. After six years of methadone maintenance, talk about progress is inconsistent with the fact that the mother is still not allowed to take home doses. Also, her methadone dosage has been increasing.

. . .

19. [Appellant-mother] has made progress but was it reasonable progress? The Court finds it was not. In the BAART documents, at the early part when she first attended, there was no group participation. She then attended some group, but stopped stating she didn't have time for group. This is contrary to her testimony of current attendance.

20. There was some contention by the mother whether the social worker, Mr. Hernandez informed her of [Chloe's] hematology appointments. The Court took judicial notice of [the] adjudication order which found missed appointments

when [appellant-mother] had the children, attending one appointment after multiple reminders. The mother was told of the appointments at the CFTs; Ms. Armstrong not hearing that is not contrary. Upcoming appointments were also referenced in each court summary that Mr. Hernandez submitted. [Appellant-mother] did make two appointments. One main reason that the children were removed from her home was the failure to take [Chloe] to the hematology appointments. Attendance therefore should have been a top priority for [appellant-mother]. She did not take initiative to ensure that she knew the appointment schedule. During one of the two appointments that [appellant-mother] attended, she left early because Direct TV was coming for installation. [Chloe's] medical needs were not up front and center for [appellant-mother].

. . .

25. Ms. Armstrong pulled out a bag of medicine for [Chloe] and read off names, dosages, and schedules. There is nothing here to show that the parents would be able to handle that. They are barely able to take care of themselves, not to mention temptation of oxycodone and prescription ibuprofen, which is to be administered as needed, and therefore misuse by the parents could not be monitored.

26. [Appellant-mother] did submit to random full panel drug screens as ordered. However, after reviewing the dates and circumstances, the court questions the randomness.

27. [Appellant-mother] did not ensure coordination between providers as ordered. She did not ask them to coordinate. Ms. Brookshire first called Dr. Loney the morning of court when she has known since October 2016, that [appellant-mother] was also attending CAPS 4U. The Court is not convinced by Ms. Brookshire's proffered reason for the delay in making contact.

The trial court also found that "[t]he children have been in the custody of the Durham County Department of Social Services (hereinafter Durham DSS) since [7 August 2015]. The children have remained continuously in foster care up to the hearing on this date." Based upon these findings of fact, the court entered the following conclusion of law:

> 4. The mother has willfully left the children in foster care for more than twelve (12) months without showing to the satisfaction of the [c]ourt that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the children.

Evidence was presented at the hearing that appellant-mother had made limited progress on her substance abuse issues and her mental health treatment recommendations while her children were in foster care. She attended individual counseling sessions with her substance abuse counselor on 31 January 2017, 30 March 2017, 10 April 2017, 9 June 2017, 12 June 2017, and 18 July 2017. She missed a session on 7 February 2017. She also attended some group counseling in January and February 2017, but no longer attended group counseling sessions after those occasions. Appellant-mother's testimony at the hearing regarding her group counseling attendance was contradicted by BAART records. Evidence was also presented that she informed her counselor that she continued to use marijuana despite negative drug screenings for marijuana, that her methadone doses had increased, that she was not receiving separate mental health treatment other than

her substance abuse treatment despite recommendations to do so, and that she had a positive screening for heroin on 6 July 2017. In addition, appellant-mother herself testified that she had not been taking prescribed medication for her mental illnesses for over a year.

Appellant-mother made limited progress on other requirements of her case plan as well. Evidence was presented that appellant-mother had only attended two of Chloe's hematology appointments, and that she left one early because Direct TV was being installed in her apartment. Additional evidence showed that appellant-mother was unable to obtain stable employment or housing as ordered by the court. At the time of the hearing, appellant-mother was applying for public housing, but staying with her uncle in public housing. Appellant-mother and her husband had been evicted from two other apartments. While appellant-mother was able to obtain jobs, she was unable to keep jobs for a significant period of time.

Assuming, *arguendo*, that finding of fact 9 was not supported by clear, cogent, and convincing evidence, the evidence at trial, coupled with the court's review of the dates of the drug screenings, provided clear, cogent, and convincing evidence in support of the court's findings of fact 14, 15, 16, 19, 20, 25, 26, and 27. These findings support the court's conclusion that appellant-mother had not made reasonable progress toward correcting the conditions that led to the children's removal and placement in foster care nearly two years prior to the hearing. Accordingly, the trial

court properly terminated the parental rights of appellant-mother pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

Because we hold that the trial court properly terminated appellant-mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2), we decline to address appellant-mother's additional arguments. *See In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986).

Conclusion

For the reasons stated herein, the trial court's order is

AFFIRMED.

Judges ELMORE and HUNTER, JR. concur.

Report per Rule 30(e).