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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-426

No. COA21-659

Filed 21 June 2022

Lincoln County, Nos. 18 JT 100-01

IN THE MATTER OF:

T.H., T.H. Minor Juveniles

Appeal by Respondents Mother and Father from order entered 18 August 2021 by Judge J. Brad Champion in Lincoln County District Court. Heard in the Court of Appeals 10 May 2022.

Diepenbrock Law Office, P.A., by J. Thomas Diepenbrock, for Respondent-Appellant Mother.

Speaks Law Firm, PC, by Garron T. Michael, for Respondent-Appellant Father.

Lincoln County Department of Social Services, by R. Scott Hudson, for Petitioner-Appellee.

Q Byrd Law, by Quintin D. Byrd, for Appellee Guardian ad Litem.

INMAN, Judge.

¶ 1

Respondents Mother and Father appeal from an order terminating their parental rights to their two minor children. For the reasoning explained below, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶ 2 The record below discloses the following:

¶ 3 On or about 2 August 2018, the Lincoln County Department of Social Services (“the Department”) received a Family Assessment report alleging that newborn minor twins Tracy and Tiffany¹ were neglected. Tracy and Tiffany were born prematurely on 31 July 2018, tested positive for amphetamines, and were immediately placed in the intensive care unit.

¶ 4 Tracy and Tiffany’s mother Respondent (“Mother”) had tested positive for amphetamines on 11 July 2018, though she denied using illegal substances and attributed her positive test to her roommate. On 3 August 2018, Mother agreed not to have unsupervised contact with her children and to complete a substance abuse assessment and follow all accompanying recommendations. Phoenix Counseling Center conducted Mother’s substance abuse assessment and as a result recommended she complete basic treatment and parenting classes.

¶ 5 Tracy and Tiffany were released from the hospital on 23 August 2018, and with the consent of the Department were placed in the custody of Respondent Father (“Father”) on the condition that he agreed to supervise all contact between them and Mother. Mother and Father did not live together.

¹ Pseudonyms are used throughout this opinion to protect the identity of the minor children pursuant to N.C. R. App. P. 42(b).

¶ 6 On or about 26 August 2018, Father called local law enforcement to report that Mother took Tracy and Tiffany away from his home without notifying him. Mother returned the children while responding officers were still at the home. She was advised to follow the safety plan developed by Social Worker Ebony Chambers.

¶ 7 Mother tested positive for methamphetamines on 20 and 23 August 2018 and on 20 September 2018. Although Mother continued attending group counseling, she failed to report to appointments for drug screens, which a social worker at Phoenix Counseling Center noted is a sign of substance abuse. As a result, Mother was elevated to Substance Abuse Intensive Outpatient (SAIOP) care.

¶ 8 On 25 September 2018, Father told a Department social worker he was working as a mechanic in Charlotte and that he had Tracy and Tiffany with him. He advised that they had stayed at his aunt's home the night before but would bring the children to the Department. However, at that same time, Mother was found at a residence in Denver, North Carolina, where the infants were found sleeping on a couch. Mother claimed to not be in violation of the safety plan because another adult was present in the home, a man named Brad. Brad had outstanding warrants for his arrest due to a failure to appear on a Possession of a Schedule II controlled substance charge. Brad was arrested and Mother and Father were advised they needed to provide alternative placement for the children.

¶ 9 When Mother and Father were unable to find alternative placement, the Department filed a non-secure custody petition and took custody of Tiffany and Tracy. Following an adjudication hearing on 29 January 2019, the trial court adjudicated Tiffany and Tracy neglected and dependent juveniles.

¶ 10 On 23 January 2019, following an assessment of Father, the Department recommended he participate in substance abuse and anger management treatment courses. Thereafter, Father continued along a pattern of attending relapse treatment and refusing random drug screenings up to and through the year of the termination hearing. The Department presented documentation that Father “was late for several visits with [the children] without notifying the Department,” would fall asleep during Mother’s visits he was supposed to supervise, and failed to attend eight of his scheduled visits with the children. A Sex Offender Specific Evaluation of Father found that he “wasn’t honest or forthcoming while testing and his results show a lack of cooperation with the process.” On 27 June 2019, Phoenix Counseling reported to the Department that Mother had “some serious mental health concerns[,]” including depression, “seeing things,” and potentially not having “bathed in weeks.”

¶ 11 On 31 March 2021, the Department filed a petition to terminate both Mother and Father’s parental rights, which came on for hearing in Lincoln County District Court on 8 June 2021. On 18 August 2021, the trial court entered an order terminating the parental rights of both Mother and Father for the grounds set forth

in N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and (2) (failure to make reasonable progress for more than a year).

¶ 12 Mother and Father appeal. They each argue that the order terminating their parental rights was unsupported by competent evidence and contained improper conclusions of law. We disagree and affirm.

STANDARD OF REVIEW

¶ 13 When a parent challenges the sufficiency of the evidence to support an order terminating parental rights, “we look to see whether there is clear, cogent and convincing competent evidence to support the findings. If there is such competent evidence, the findings are binding upon us on appeal.” *In re B.D.*, 174 N.C. App. 234, 246, 620 S.E.2d 913, 921 (2005) (citation omitted). “Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal.” *In re A.W.*, 377 N.C. 238, 2021-NCSC-44, ¶ 9. We then review the supported findings to determine whether they in turn support the trial court’s conclusions of law. *Id.* If the trial court enters an order terminating parental rights based on more than one ground provided by Section 7B-1111(a), this Court will affirm the termination order if any of the identified grounds supports the termination order. *Id.*

ANALYSIS

¶ 14 North Carolina General Statutes enumerate eleven grounds under which a trial court has the authority to terminate a parent’s parental rights. N.C. Gen. Stat.

§ 7B-1111(a)(1)-(11) (2021). “The burden in these proceedings is on the petitioner or movant [County Department of Social Services] to prove the facts justifying the termination by clear and convincing evidence.” N.C. Gen. Stat. § 7B-1111(b).

¶ 15 Section 7B-1111(a)(2) provides a court may terminate a respondent’s parental rights upon a finding that

[t]he 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.

N.C. Gen. Stat. § 7B-1111(a)(2).

¶ 16 An order terminating parental rights under this subsection “must contain adequate findings of fact as to whether the parent acted willfully and as to whether the parent made reasonable progress under the circumstances.” *In re D.C.*, 225 N.C. App. 327, 330, 737 S.E.2d 182, 185 (2013). “[W]illfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort.” *Id.* “A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the child.” *Id.* “[A] parent’s prolonged inability to improve [his or] her situation, despite some efforts in that direction, will support an adjudication” under subsection (a)(2). *In re A.B.*, 253 N.C. App. 29, 33, 799 S.E.2d 445, 449 (2017) (quotation marks omitted). The statute does not “require a finding of

fault by the parent.” *Id.*

¶ 17 We first address Mother’s challenge to the trial court’s termination of her parental rights pursuant to subsection 7B-1111(a)(2) for willfully leaving her children in foster care without showing reasonable progress in correcting the conditions that led to their removal. Guardian and the Department summarize Mother’s argument as simply a statement that she “essentially disagrees with the trial court’s conclusion that her progress was not substantial.” We agree with this characterization and, consistent with the applicable standards of review, reject Mother’s argument.

¶ 18 Mother cites her negative drug screens during the three months immediately prior to the termination hearing. According to Mother, those screenings proved she “had corrected the issue” of her prior drug-relapse history and therefore required the trial court to conclude she had corrected the issues which led to the separation for purposes of the statute.

¶ 19 But the record evidence reveals that during the other months in the year before the hearing, Mother was employed only on an “as-needed” basis, refused at least twelve drug screenings, failed two, and was accused of “defrauding [the Department] by placing a container filled with clean urine into her vagina and emptying it when the [test] was performed” during the drug screenings she did pass. Mother cites no authority for her argument that conduct during the most recent months leading up to a termination hearing carries more weight than conduct during earlier months—

as a matter of law—in evaluating section 7B-1111(a)(2). Recent precedent suggests otherwise. *See In re J.R.F.*, 380 N.C. 43, 2022-NCSC-5 (rejecting the father’s argument concerning his reasonable progress where “any measurable improvement did not begin until . . . merely a month or two before the start of the termination of parental rights hearing”).

¶ 20 Mother’s recital of additional evidence in the record challenges the weight the trial court assigned to the evidence, which this Court may not reconsider. *See In re K.P.-S.T.*, 375 N.C. 797, 804, 850 S.E.2d 906, 911 (2020). Mother does not challenge the trial court’s findings that she had failed or refused random drug screenings on at least fifteen occasions between February 2020 and April 2021 prior to the 8 June 2021 termination hearing. The trial court found that Mother’s negative drug screenings had not been maintained over a sufficient period of time constituting reasonable progress under subsection 7B-1111(a)(2). We will not reweigh the evidence before the trial court, and conclude it was sufficient to support the trial court’s second ground for termination.

¶ 21 Father advances a similar argument for vacating the termination of his parental rights under subsection 7B-1111(a)(2). We reject his arguments for the same reasons.

¶ 22 The uncontroverted evidence showed, and the trial court found, that Father either failed or refused random drug screenings on at least twelve occasions between

February 2020 and June 2021, and further that he had completed sex offender evaluation but refused to comply, resulting in inconclusive findings prior to the 8 June 2021 termination hearing. We affirm the trial court's finding that Father had failed to make reasonable progress toward correcting those conditions which led to the children's removal.

¶ 23 Because we conclude the trial court's findings of fact regarding Mother's and Father's failure to make reasonable progress for more than a year are supported by clear, cogent, and convincing evidence, and that those findings in turn support the trial court's conclusions of law that Mother's and Father's parental rights could be terminated based on Section 7B-1111(a)(2), we do not reach Mother's and Father's challenges to the trial court's conclusion that their parental rights also should be terminated based on their neglect of Tracy and Tiffany. *In re A.W.*, ¶ 9 (“[A]n adjudication of any single ground for terminating a parent's rights under [Section] 7B-1111(a) will suffice to support a termination order.”).

CONCLUSION

¶ 24 For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).