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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-639

No. COA22-237

Filed 20 September 2022

Robeson County, No. 19 JT 180

IN THE MATTER OF: E.G.

Appeal by respondent from order entered 10 November 2021 by Judge Angelica C. McIntyre in Robeson County District Court. Heard in the Court of Appeals 6 September 2022.

J. Edward Yeager, Jr., for petitioner-appellee Robeson County Department of Social Services.

Peter Wood for respondent-appellant mother.

N.C. Administrative Office of the Courts, Guardian Ad Litem Program, by Staff Counsel Michelle FormyDuval Lynch, for guardian ad litem.

PER CURIAM.

¶ 1 Respondent appeals the trial court's order terminating her parental rights to her child, Ellie.[1] Respondent challenges each of the trial court's three grounds for termination. Because we conclude the trial court made sufficient findings of fact to support its conclusion that Respondent's parental rights were subject to termination

[1] We use a pseudonym to protect the identity of the minor child and for ease of reading.

for failure to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2), we affirm the termination order.

Facts and Procedural History

¶ 2 In October 2018, the Robeson County Department of Social Services received a neglect referral alleging that Respondent's child, ten-month-old Ellie, had serious medical issues and was not receiving proper medical and remedial care. DSS provided services to assist Respondent, but the service groups struggled to work with her.

¶ 3 Ellie underwent two surgeries in January 2019 and another surgery in March 2019. After the third surgery, DSS arranged a 24-hour trial period in which Respondent would care for Ellie and her twin brother in the hospital. During that period, Respondent left the two children alone in the hospital room for a significant amount of time. When confronted, Respondent claimed she went to the cafeteria to get something to eat while the children were asleep. When Ellie was ready to be discharged, the hospital staff refused to release her to Respondent because of their concerns that she would be unable to provide Ellie with satisfactory care. The father of Respondent's older children underwent the necessary training, and Ellie was discharged into his care on 12 March 2019.

¶ 4 Respondent failed to bring Ellie to an appointment on 23 April 2019 and, during a 2 May 2019 appointment, Ellie was found to have lost 700 grams of weight since her discharge from the hospital. Ellie's pediatric cardiologist asked Respondent

to immediately admit Ellie to the hospital, but Respondent refused, stating she would "take her as soon as she can." Based on this delay, DSS received another neglect referral. Respondent then brought Ellie to the hospital at 9:30 p.m. on 3 May 2019. Ellie was discharged on 8 May 2019.

¶ 5 Respondent rescheduled Ellie's next Duke Children's Specialty Services appointment from 16 May to 21 May 2019. When a nurse made a home visit on 20 May 2019, she was concerned that Respondent did not have a pulse oximeter or an oxygen tank and that Ellie's nutritional supplement was in Respondent's car. Respondent then failed to attend Ellie's rescheduled appointment, and Ellie was not seen by her medical care providers until a DSS social worker brought her on 30 May 2019. Ellie had again lost weight after her discharge from the hospital.

¶ 6 Ellie was scheduled to have her gastrostomy tube (G-Tube) changed on 5 June 2019 and to undergo a cardiac catheterization five days later. Respondent changed this schedule so that Ellie would undergo both procedures on 10 June 2019, but on that date, Respondent brought Ellie more than four hours late for the scheduled 7:00 a.m. surgery. As a result, the cardiac catheterization had to be rescheduled and care providers again recommended that Ellie be hospitalized due to her weight loss.

¶ 7 Ellie was readmitted to the hospital at 10:00 p.m. on 11 June 2019. She weighed about half a pound less than when she was discharged on 8 May 2019. The medical team informed DSS that discharging Ellie into Respondent's care would be

dangerous, based on her inability to ensure Ellie received timely medical treatment.

¶ 8 On 21 June 2019, DSS filed a juvenile petition alleging that Ellie was neglected because she was not being provided necessary medical care. DSS obtained nonsecure custody of Ellie the same day and placed her in a foster home. On 3 July 2019, Respondent signed an Out-of-Home Family Services Agreement that required her to address any deficiencies with her parenting skills and to ensure consistent attendance at Ellie's scheduled medical appointments.

¶ 9 The trial court held a hearing on the neglect petition on 13 November 2019. The trial court later entered an order adjudicating Ellie as neglected based on Respondent's failure to consistently attend Ellie's medical appointments and failure to provide Ellie with the care necessary to treat her conditions. In a separate disposition order, the trial court ordered Ellie to be placed in a trial home placement with Respondent. Ellie remained in DSS's custody, and DSS could stop the trial placement if Respondent missed any of Ellie's medical appointments.

¶ 10 After a 22 January 2020 review hearing, the trial court entered an order which found that Ellie's trial placement with Respondent began on 13 November 2019 and ended on 3 December 2019, when Ellie was returned to her previous foster home. Respondent had been thirty minutes late for one of Ellie's occupational therapy appointments and refused to allow a nurse into her home to provide care for Ellie. The court left Ellie in DSS custody and set a date for a permanency planning hearing.

¶ 11 In its order following that 23 July 2020 initial permanency planning hearing, the trial court found that Respondent had completed parenting classes but was late to Ellie's appointment for a lung perfusion scan and check-in for her cardiac catheterization. The court noted that "had [Respondent] not shown up [Ellie's] procedure may have been rescheduled and any procedure that is pushed back, could put the child at risk of dying." The court established a primary permanent plan of reunification with a concurrent plan of adoption.

¶ 12 In its next permanency planning order entered on 20 November 2020, the trial court found that Respondent was attending Ellie's appointments, but she missed a scheduled training on Ellie's G-Tube. The court noted that Ellie was "currently receiving injections that require training in order to give them correctly by the caregiver," and she "has a G-Tube which also requires a training of the person who is responsible for making sure that the feed is going appropriately and the tube is placed and utilized correctly." The primary and concurrent permanent plans remained unchanged.

¶ 13 Following another permanency planning hearing, the trial court entered an order on 18 December 2020 in which it found that Respondent was not consistently attending Ellie's appointments and had not "followed up with medical personnel or other services for" Ellie. The court also made findings detailing the rigorous, on-going medical care Ellie required, including consistent monitoring and regular

administration of medications and injections. The court noted the "lack of dedication and priority on [Respondent]'s part to make sure that she [is] at [Ellie's] appointments on time or to participate in them fully when they are available to her." The permanent plans were switched to a primary plan of adoption with a concurrent plan of reunification.

¶ 14 On 5 April 2021, DSS petitioned to terminate Respondent's parental rights to Ellie based on the grounds of neglect, willful failure to make reasonable progress, and willful failure to pay a reasonable portion of Ellie's cost of care. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3). The court soon after held another permanency planning hearing, entering an order in which it found that Respondent failed to consistently attend Ellie's medical appointments, failed to act appropriately during the appointments she did attend, and failed to grasp the gravity of Ellie's medical conditions.

¶ 15 The trial court heard the termination petition on 11 October 2021. On 10 November 2021, the trial court entered an order terminating Respondent's parental rights, concluding that all three termination grounds alleged by DSS existed and that termination was in Ellie's best interest.[2] Respondent appealed.

Analysis

¶ 16 Respondent argues that the trial court erred by concluding three grounds

[2] The trial court's order also terminated the parental rights of Ellie's alleged father and any unknown father, but they are not parties to this appeal.

existed to terminate her parental rights. This Court reviews a trial court's adjudication of termination grounds "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (citation omitted). "Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 17 We first address Respondent's challenge to the trial court's conclusion that her parental rights were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(2). This ground for termination may be found when 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." N.C. Gen. Stat. § 7B-1111(a)(2). A parent's reasonable progress under this ground "is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (cleaned up).

¶ 18 Respondent argues that the trial court erred when it concluded she failed to make reasonable progress in correcting the conditions that led to Ellie's removal. She

first contends that the trial court never ordered her to complete a case plan nor set out any specific requirements to have Ellie returned to her care. Respondent claims that "[w]ithout the goals of the plan articulated in a court order and the expectations of [Respondent] made clear, it is impossible to determine if [Respondent] reasonably followed the plan."

¶ 19 While an adjudication under N.C. Gen. Stat. § 7B-1111(a)(2) can be informed by a parent's compliance with a case plan, our Supreme Court has made clear that "compliance or noncompliance with a case plan is not, in and of itself, determinative of a parent's reasonable progress in correcting the conditions that led to a child's removal from the home." *In re B.J.H.*, 378 N.C. 524, 2021-NCSC-103, ¶ 62. Here, Respondent does not challenge the trial court's findings that the "reason the Court became involved in this matter were concerns about the minor child's ability to thrive, about missing Doctor appointments and being late for surgeries" or that "the Respondent Mother was ordered to complete Parenting classes, obtain employment, and ensure that the child was attending medical appointments on time." Thus, the undisputed record evidence and findings show that Respondent was aware of the conditions that led to Ellie's removal and the reasonable progress she needed to make to have Ellie returned to her care. Even if the trial court never explicitly ordered Respondent to comply with the case plan—a case plan she personally agreed to and signed—Respondent cannot use that omission to avoid an adjudication under N.C.

Gen. Stat. § 7B-1111(a)(2). *See id.* ¶ 63 ("[T]he fact that the trial court did not order respondent-father to comply with his [case plan] . . . does not foreclose a termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(2).").

¶ 20 Respondent further contends that she made reasonable progress in correcting the removal conditions by the time of the termination hearing. She notes that she completed a parenting class, had stable housing, maintained steady employment, and attended most of Ellie's medical appointments as the case progressed.

¶ 21 The trial court made numerous unchallenged findings about Respondent's progress after the initial neglect petition was filed on 21 June 2019:

> 9. The Respondent Mother's case plan was not complex. While she did complete parenting classes the crux of why the Department became involved was never resolved. The Respondent Mother continues to miss appointments, be late for appointments, or not be engaged in appointments that concern the child's health.
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> 10. The child was scheduled for a lung scan on June 20, 2020, and the Respondent Mother was allowed to attend that appointment. The scan was schedule for 8:00 am but she did not arrive to the hospital until 9:45 am.
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> 11. The child was placed with the Respondent Mother on a trial home visit after completing the parenting classes in November of 2019. However, that trial home visit ended after approximately a week. The reason it ended was because the child again was failing to thrive and lost almost a pound during the time she was with the Respondent Mother. While it is unclear if she lost half a pound or eleven ounces, in this case losing any weight in that short amount of time could be extremely detrimental

to the child.

12. Respondent Mother was set up with services to ensure that the trial home visit was successful such as the nursing assistant, who was assigned to the child five days a week, as well as the dates and times for appointments, and feeding schedule for the G-Tube. However, the Respondent Mother refused to allow the nurse into the home or to travel with her when Respondent Mother went to visit family.

13. Respondent Mother gave the excuse of not having of (sic) the proper formula to give the child in the G-Tube. However, the evidence shows that the foster parent provided the excess formula they had at their home to the Respondent Mother so that she would have what was needed for the child.

14. That when the Respondent Mother did attend appointments there were times when she treated the medical appointments, specifically the occupational therapy and feeding therapy, as additional visitation time. Respondent Mother would do things that were distracting to the child who would lose focus. Losing focus could cause the child to slip or miss steps during the occupational therapy or cause her to pocket food in the case of feeding therapy, which could cause the child to choke. However, there were times that the Respondent Mother did encourage the child as she was engaging in her therapy.

15. Due to Covid, Duke had a policy in place that stated only one parent or guardian could attend the therapy sessions in person. So unlike traditional therapy sessions where Respondent Mother could have participated in-person, she was allowed to participate only virtually.

16. Respondent Mother did miss crucial appointments that included trainings for medical needs of the child. The child was in the hospital from July 25, 2020 until August 25, 2020. The Respondent Mother went to see the juvenile on the two days that she had surgery scheduled. She was

> there at check in but did not come back when the doctors came to update the foster parent on the procedures. Moreover, the juvenile was prescribed injections twice a day to control blood clots. The Respondent Mother could have stayed at the hospital to receive the training necessary to administer the injections, but did not and could not provide a reason as to why she did not.
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> 17. The juvenile had follow-up appointments with the cardiologist. Those appointments were either in Raleigh, NC or Fayetteville, NC. Respondent Mother did attend most of these appointments. However, there were appointments that would be listed as missed due to Respondent Mother being late and not being allowed to participate in the appointment that had already started.
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> 18. Respondent Mother gave the excuse of car trouble, not feeling well, flat tires, and getting stopped by the train. Respondent Mother never indicated to the Department a need for transportation to attend appointments. Respondent Mother was provided the dates, times, and locations of appointments well in advance to be able to request help with transportation.
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> 19. Respondent Mother requested additional training for the juvenile[']s G-Tube and oxygen. Respondent Mother contacted the nursing services through Bayada and Bayada agreed to set up the training. However, the Respondent Mother never followed through.
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> 20. Moreover, there has been evidence that the Department is now engaged with the Respondent Mother for failing to provide necessary medical care to the child that remains in her home. That child does not have complex medical needs, but is still not receiving medical care.

¶ 22 The trial court's binding findings reflect that Respondent made little progress by the time of the termination hearing in correcting the most important condition

that led to Ellie's removal: Respondent's failure to ensure Ellie reliably received necessary medical care. When Respondent was provided with a trial home placement after Ellie was adjudicated neglected, she failed to provide her with necessary nutrition, causing her to lose weight, which the court found was "extremely detrimental" to Ellie's health. Respondent continued to miss appointments, show up late for appointments, and act inappropriately during appointments, at times distracting Ellie from her therapy. Respondent was never properly trained on administering Ellie's injections, which were needed to control blood clots, and she never followed through on her request to receive additional training to handle Ellie's G-Tube and oxygen. Finally, the court found that, at the time of the termination hearing, DSS was separately engaged with Respondent due to her failure to provide necessary medical care for the child that remained in her care, despite that child "not hav[ing] complex medical needs." Taken together, these findings reflect that, even after Ellie had been in DSS custody for more than two years, Respondent remained unable to provide Ellie with the consistent, on-going care necessary to treat her medical conditions. Consequently, the court's unchallenged findings fully support its conclusions that Respondent's parental rights could be terminated under N.C. Gen. Stat. § 7B-1111(a)(2), as she failed to make reasonable progress to correct the conditions that led to Ellie's removal from her home.

Conclusion

¶ 23 We hold that the trial court did not err by adjudicating Respondent's willful failure to make reasonable progress in addressing the conditions that led to Ellie's removal as a termination ground. Because we have concluded one termination ground is supported, we need not address Respondent's arguments challenging the other two grounds found by the trial court. *See In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019) ("[A] finding of only one ground is necessary to support a termination of parental rights."). Likewise, Respondent does not challenge the trial court's determination that it was in Ellie's best interest to terminate Respondent's parental rights, and we therefore do not address that issue on appeal. Accordingly, we affirm the termination order.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ, and HAMPSON.

Report per Rule 30(e).