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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-386

Filed 07 February 2023

Mecklenburg County, 16 JT 333

IN THE MATTER OF: L.L.J.

Appeal by respondent-mother from order entered 26 January 2022 by Judge Faith A. Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 10 January 2023.

Mecklenburg County DSS/YSF, by Senior Associate County Attorney Marc S. Gentile, for petitioner-appellee Mecklenburg County DSS.

Peter Wood for respondent-mother appellant.

Parker, Poe, Adams & Bernstein LLP, by R. Bruce Thompson, II, for Guardian ad Litem.

ARROWOOD, Judge.

Respondent-mother (“mother”) appeals from the trial court’s order terminating her parental rights of L.L.J. (“Laura”).¹ For the following reasons, we affirm the trial court’s order.

I. Background

¹ A pseudonym is used, consistent with that used in the briefs on appeal, to protect the identity of the minor child and for ease of reading.

Laura was born on 17 March 2016 in Mecklenburg County, North Carolina. Mother was 15 at the time of Laura's birth and was residing with her mother, Laura's grandmother, R. B.² ("Ms. R.B.") in a hotel in Charlotte. The Mecklenburg County Department of Social Services ("DSS") filed a juvenile petition on 19 July 2016 alleging Laura was "abused, neglected and dependent as defined by N.C. Gen. Stat. §§ 7B-101(1), (15), [and] (9)[.]"

In support of their allegations, DSS alleged that mother and Laura became initially involved with DSS on 21 March 2016 when "it was reported that [mother] was not enrolled in school for the entire year and had recently given birth[.]" On 19 May 2016, it was reported to DSS that mother was still not enrolled in school and "assaulted [Ms. R.B.]" The physical altercation between mother and Ms. R.B. occurred on 10 May 2016. Mother and Ms. R.B. were subsequently evicted from their residence at the hotel and Ms. R.B. attempted to arrange for the family to return to their previous home in Alabama. Mother refused to return, leaving her with "no other known relatives or family supports in Mecklenburg County or within the [s]tate of North Carolina." Due to mother's own minority and lack of residence, DSS alleged mother had been "abandoned" and "[Laura] [was in] need of placement[.]"

DSS also received a report alleging mother was sexually abused by Ms. R.B.'s boyfriend, Mr. Thomas. Ms. R.B. disclosed to DSS that "she believe[d] [Mr. Thomas]

² Initials are used throughout this opinion to protect the identity of the minor child.

to be the father of [Laura].” Mother did not confirm these allegations and stated Laura’s father was D.J.³ whom she met upon arriving in Charlotte. Mother was unable to provide any contact information pertaining to D.J. At the time of the petition and throughout this case, Mr. Thomas was not interviewed by DSS or Charlotte-Mecklenburg Police Department.

An order for nonsecure custody was filed on 19 July 2016, and Laura and mother were placed together at Nazareth Homes in Rowan County. A hearing to determine the need for continued nonsecure custody was held on 26 July 2016. The trial court continued nonsecure custody finding “mother has no source of income, is a minor, [and] is behind in school[.]” The trial court further found that “mother was in custody as a child in Alabama due to substance abuse issues, sexual abuse, [and] improper care. [Mother] was in custody from 2002-2011.”

An adjudicatory and dispositional hearing were held on 1 September 2016 and facts were submitted for stipulation. Based on the aforementioned facts, Laura was adjudicated dependent and the removal conditions identified by the trial court included mother’s volatile relationship with Ms. R.B., mother’s minority, and mother’s lack of stable housing for her and Laura.

Additionally, the trial court found “mother is doing very well and there is progress with [Laura]. . . . [M]other has begun to work her case plan.” The

³ Throughout this case, DSS made multiple attempts to contact D.J. but were unable to. At this time, paternity of Laura has not been established.

dispositional order was entered on 26 September 2016. The court ordered DSS “to explore the potential putative fathers, whether that be finding out where [Mr. Thomas] is or sitting down with . . . mother and going through Facebook.” The trial court ordered the primary plan to be reunification with concurrent plans of legal guardianship and adoption.

In mother’s initial case plan, she was ordered to: “engage in an academic program to complete either her GED or high school diploma[;] engage in parenting classes[;] complete [an independent psychological assessment (“IPA”)][;] and comply with recommendations, as well as demonstrate that she could live independently and meet her and [Laura]’s needs.”

A review hearing was held on 10 February 2017 and the trial court’s order was entered on 22 February 2017. The court found that mother had completed an IPA and was enrolled in high school; but stated that prior to reunification “[f]ull compliance with a court ordered case plan and compliance with requests reasonable [sic] related to reunification[]” were necessary. The trial court also stated that “mother has been informed that failure or refusal to cooperate with the primary and/or secondary plan may result in an order that reunification efforts cease.” The court found it was in Laura’s best interest to remain with her foster parents.

Since 2017 there have been thirteen⁴ permanency planning review hearings (“PP hearings”). Based on the record, mother has a history of progression and regression in reference to her case plan. At the June 2017 PP hearing, the trial judge found mother was “AWOL at the end of March 2017 for about two months.”

13. . . . [Mother] stayed in hotels in the Charlotte area initially until May. [Mother] won’t disclose with whom she was staying. She has not been honest and has engaged in risky and dangerous behavior. She eventually got to Alabama and was staying with [Ms. R.B.] for almost 10 days, until she was found by police and arrested. The plan was to be with Mr. Thomas and she planned to come back to get [Laura] when she was eighteen. Ms. [R.B.] did not notify anyone while [mother] was with her. Ms. [R.B.] and [mother]’s behaviors and responses are alike. Ms. [R.B.] is not credible.

[Laura] is doing well in [her] current placement.
[Laura] is not safe with [her] mother.

Laura remained in foster care and the trial court concluded “[t]ermination of parental rights is in [Laura’s] best interests.” The court also ordered mother to avoid contact with Ms. R.B. and Mr. Thomas.

At the PP hearing which occurred in September 2017, the trial court found mother “was not making adequate progress within a reasonable period of time under the plan.” A petition for termination of parental rights (“TPR”) was filed in August 2017 but was eventually dismissed in May 2018.

⁴ The orders are incorrectly numbered and orders from the April 2019 and May 2019 permanency planning hearings are missing from the record.

Mother was incarcerated during the PP hearing held on 24 January 2018. Although mother was incarcerated, the trial court found she was “making adequate progress under the plan” and working to obtain her GED. Mother was also attending therapy and parenting education classes. The trial court found that as mother was “cooperating and demonstrating a different mind-set . . . termination of parental rights at th[at] time would not be warranted.”

For the PP hearings held on 28 February and 12 June of 2018, the trial court found mother was “making adequate progress under the plan[]” as she was “continu[ing] to do well with [the] services being provided” during her incarceration.

In October 2018, mother’s progress began to regress as she “engaged in criminal activity and again ha[d] pending charges.” The trial court found she was “not making adequate progress” and Laura continued to remain in foster care.

At the subsequent PP hearing held on 9 January 2019, the trial court found mother was “acting in a manner consistent with the health and safety of [Laura].” However, it was still not possible for Laura to return to mother as “[n]o parent ha[d] adequately remedied the issues that led [Laura] into custody.” The trial court found mother continued to “mak[e] adequate progress” at the PP hearing in May 2019.

As for the PP hearing held in October 2019, the trial court added domestic violence services to mother’s case plan after an “incident with [mother] and her boyfriend[,] [M.Y.]” Furthermore, “[mother] had missed a few drug screens, had missed some therapy appointments, her lease at that time was going to expire in

December, and she wasn't engaged in mental health services." The court found "[n]o parent is acting in a manner consistent with the health or safety of [Laura]." Thus, the "court-ordered permanent plan as of . . . October 2019" was adoption.

On 23 October 2020, DSS filed a TPR. DSS stated, in pertinent part, the following:

6. That, per N.C. Gen. Stat. § 7B-1111(a)(2), the respondent parents have willfully left the juvenile in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstance has been made in correcting those conditions which led to the removal of the juvenile from the parents' custody in that inter alia:
 - a. [Youth Family Services ("YFS")] received a couple of referrals in 2016 prior to the filing of the juvenile petition on July 19, 2016. The referrals alleged that the mother was 16⁵ years old at the time of [Laura]'s birth, that the mother and [Ms. R.B.] had a difficult and strained relationship which occasionally involved physical altercations, and that they lost their housing. A juvenile petition was filed on July 19, 2016. [Laura] was adjudicated dependent on September 1, 2016. The identified removal conditions include the mother's age and maturity and the relationship between the respondent mother and [Ms. R.B.] which impacts placement.
 -
 - c. There has been a Review Hearing, a Permanency Planning Hearing (PPH), and multiple Subsequent PPH hearings since the Dispositional hearing. The most recent was Subsequent PPH [9] which occurred on July 16, 2020. As of that date, paternity had not

⁵ Mother was actually 15 when she gave birth to Laura.

been established for [Laura]. Additionally, the putative father had not had any contact with the child or provided any financial assistance to defray the cost of care. The mother's housing status had changed early in 2020. The respondent mother's lease was allowed to expire after she damaged her apartment. Upon information and belief, her former [guardian ad litem] (from when she was in YFS custody) paid for the mother's rent. Following the lease expiration, the respondent mother moved into the residence of her former GAL. Respondent mother also testified [sic] positive for marijuana while living there. Respondent mother does [have] a Voluntary Placement Agreement with YFS and she is in compliance with that agreement. With those funds, she is paying her rent and managing other expenses.

- d. The parents have failed to demonstrate that they can provide for the juvenile's basic needs.
 - e. To date, paternity has still not been established.
 - f. The parents have failed to provide any financial assistance to defray the cost of care.
 - g. Because 1) the respondent putative father has done literally nothing to maintain contact with his daughter, YFS, or the [c]ourt or establish that he could meet [her] basic needs, 2) the respondent mother has not established that should [sic] could meet the juvenile's basic needs after having the child be in YFS custody for more than four years, and 3) neither parent has contributed in any way to the cost of care, the removal conditions have not been ameliorated in any way. Accordingly, YFS cannot recommend that the juvenile be returned to the care of [her] parents.
7. That, per N.C. Gen. Stat. § 7B-1111(a)(3) and the above facts in Paragraph 6, the juvenile has been in YFS

custody and the respondent parents have for a continuous period of six months immediately preceding the filing of this petition willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

8. That, per N.C. Gen. Stat. § 7B-1111(a)(5) and the above facts in Paragraph 6, the juvenile was born out of wedlock and the child's biological father has not established paternity as of the date of the filing of this petition.
9. That, per N.C. Gen. Stat. § 7B-1111(a)(6) and the above facts in Paragraph 6, the respondent parents are incapable of providing for the proper care and supervision of the juvenile, such that she is dependent, and that there is a reasonable probability that the incapability will continue for the foreseeable future.

A TPR pre-trial order was entered on 14 December 2020. Due to multiple continuances, subsequent PP hearings were conducted in March and July 2021. Hearings on the TPR were then conducted on 28 September 2021, 1 October 2021, 29 November 2021, and 9 December 2021, Judge Fickling-Alvarez presiding.

The adjudicatory portion of the termination hearing concluded on 19 October 2021. At the close of the hearing, the trial court orally rendered its determination that grounds existed to terminate mother's parental rights. The dispositional hearing to determine Laura's best interests was conducted on 29 November 2021. Throughout the TPR hearings, the trial court considered testimony from mother, Candace Bolder, the YFS social worker assigned to mother's case, and Ms. D.J., mother's aunt, along with various documents and exhibits.

On 26 January 2022, the trial court entered an order concluding that termination of mother's parental rights was in Laura's best interests. Mother timely appealed on 16 February 2022.

II. Discussion

On appeal, mother argues the trial court erred in terminating her parental rights based on "grounds that were neither properly supported by the evidence nor by the other findings of fact and conclusions of law[.]" We disagree.

Our Supreme Court has "previously explained the standard of review for termination of parental rights proceedings as follows:"

[p]roceedings to terminate parental rights consist of an adjudicatory stage and a dispositional stage. At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence that one or more grounds for termination exist under section 7B-1111(a) of the North Carolina General Statutes. We review a trial court's adjudication under N.C.G.S. § 7B-1109 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. The trial court's conclusions of law are reviewable de novo on appeal.

In re Q.P.W., 376 N.C. 738, 741, 855 S.E.2d 214, 217 (2021) (citation omitted). "[T]he trial court's finding of *any* one of the . . . enumerated grounds is sufficient to support a termination." *In re H.B.*, __ N.C. App __, __, 877 S.E.2d 128, 136 (2022) (citation and internal quotation marks omitted) (emphasis in original). "Thus, on appeal, if we determine that any one of the statutory grounds enumerated in § 7B-1111(a) is supported by findings of fact based on competent evidence, we need not address the

remaining grounds.” *Id.* (citation and internal quotation marks omitted). Accordingly, we do not address N.C. Gen. Stat. § 7B-1111(a)(3) and limit our review to N.C. Gen. Stat. § 7B-1111(a)(2) (“subsection (a)(2)”).

Pursuant to subsection (a)(2), a parent’s parental rights may be terminated 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) (2022). “The twelve-month period begins when a child is left in foster care or placement outside the home pursuant to a court order, and ends when the motion or petition for termination of parental rights is filed.” *In re Q.P.W.*, 376 N.C. at 742, 855 S.E.2d at 218 (citation and brackets omitted). Here, the TPR was filed October 2020, thus the relevant time period is from October 2019 to October 2020.

Moreover,

[t]ermination under [subsection (a)(2)] requires the trial court to perform a two-step analysis where it must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over 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 Z.A.M., 374 N.C. 88, 95, 839 S.E.2d 792, 797 (2020) (citation omitted). It is clear

from the trial court's TPR order and the extensive record in this case, that Laura had been in DSS custody since September 2016. Having satisfied the first element, we now examine mother's willfulness and ability to make reasonable progress to correct the conditions which led to Laura's removal.

"A parent's 'willfulness' in leaving a child in foster care may be established by evidence that the parents possessed the *ability* to make reasonable progress, but were *unwilling* to make an effort." *In re Baker*, 158 N.C. App. 491, 494, 581 S.E.2d 144, 146 (2003) (citation omitted) (emphasis in original). Here, the trial court made the following relevant findings of fact:

6. [Laura] was adjudicated dependent on September 1, 2016. . . . The identified removal conditions included the respondent mother's age and maturity level and the relationship the respondent mother had with [Ms. R.B.] which affected the respondent mother's ability to provide proper placement for [Laura] and contribute to respondent mother's inability to meet [Laura]'s basic needs.

. . . .

8. . . . During the majority of [PP hearings in this case], the respondent mother was not making adequate progress on her case plan services and tasks and in ameliorating the removal conditions. Moreover, during the majority of those hearings, the respondent mother was acting in a manner inconsistent with [Laura]'s health and safety. Respondent mother did complete some tasks and engage in some services over the life of the underlying case, but she has been "consistently inconsistent" with service engagement and progress throughout this case. Indeed, during one prior hearing, this [c]ourt found that respondent

mother had a pattern of making progress and then regressing, and then making more progress and regressing again.

9. Domestic violence (DV) services were added as a component of the respondent mother's case plan during the October 2019 hearing due to DV incidents involving the respondent mother and [M.Y.]. This service lasts approximately twelve weeks long. During one DV incident in particular, [M.Y.] damaged a former apartment where the respondent mother was living. Ms. . . . Ward, a support for the respondent mother, was paying for that apartment and, as a result of that incident with [M.Y.], Ms. Ward declined to renew that lease. Consequently, the respondent mother lost that apartment.
10. The pandemic stemming from Covid-19 caused courts and DV (as well as other) services to be temporarily closed beginning in March 2020. DV services were closed until approximately July 2020 when such services became available again. The respondent mother could have engaged in DV services from October 2019 until March 2020. The respondent mother did not complete DV services until approximately August of 2021 so it took her approximately twenty months to complete this service. This [sic] length of time it took to complete this service was not reasonable under the circumstances.
11. In addition to completing DV services, respondent mother was required to demonstrate what she had learned and be able to apply the information she had learned. She failed to do that. The night before the first date of this TPR proceeding, the aforesaid [M.Y.] was at her residence with his young daughter. . . . Respondent mother and [M.Y.] did not have a child in common and no reason to have any contact. . . .
12. This [c]ourt during the underlying matter specifically

advised the mother that ongoing contact with [M.Y.] was contrary to [Laura]’s best interest and contrary to any efforts she was making to reunify with the child.

. . . .

21. As suggested above, the respondent mother’s case plan was tied to the need for her to demonstrate stability and maturity. She made progress with some components, but not in others. It has taken her more than five years to make the progress that she has made. She did have the ability to make progress. Her decision-making indicates that she was unwilling to make the effort necessary to make the progress that she needed to make.

We conclude that these findings support the trial court’s conclusion that mother failed to make reasonable progress to correct the conditions which led to Laura’s removal. Furthermore, these findings are supported by competent evidence, including testimony from the TPR hearings and the twelve previous PP hearing orders. *In re A.C.*, 378 N.C. 377, 386, 861 S.E.2d 858, 868 (2021) (“A trial court may take judicial notice of findings of fact made in prior orders . . . where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon competent evidence.” (citation, brackets, and internal quotation marks omitted)). Accordingly, mother’s argument is overruled.

III. Conclusion

For the foregoing reasons, we affirm the trial court’s termination of mother’s parental rights.

AFFIRMED.

IN RE: L.L.J.

Opinion of the Court

Judges WOOD and GORE concur.

Report per Rule 30(e).