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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-413

Filed 07 March 2023

Henderson County, Nos. 19 JT 150, 19 JT 151

IN THE MATTER OF: D.D.K. & H.C.K.

Appeal by Respondent-Mother from order filed 21 February 2022 by Judge Gene Johnson in Henderson County District Court. Heard in the Court of Appeals 11 January 2023.

Anne C. Wright for Respondent-Appellant Mother.

Susan F. Davis for Petitioner-Appellee Henderson County Department of Social Services.

Pinto Coates Kyre & Bowers, PLLC, by Brittany M. Millisor and Jon Ward, for Petitioner-Appellee Guardian ad Litem.

CARPENTER, Judge.

Respondent-Mother appeals from an order (“Order”) terminating her parental rights to her minor children, Haley and Dylan (collectively, “the Juveniles”).¹ The Juveniles’ father, whose rights were also terminated by the Order, is not a party to this appeal. On appeal, Respondent-Mother challenges both grounds the trial court

¹ Pseudonyms were used to protect the identities of the minor children. See N.C. R. App. P. 42.

found existed to support the termination of her parental rights. After careful review, we affirm the Order terminating Respondent-Mother's parental rights, based on failure to make reasonable progress.

I. Factual and Procedural Background

The record and testimony tend to show the following: both Juveniles were born in Henderson County, North Carolina. Henderson County Department of Social Services ("HCDSS") became involved with this case in 2019, after Respondent-Mother was found slumped over her steering wheel at a McDonald's, and officers discovered hypodermic needles, 0.7 grams of methamphetamine, and the Juveniles in the car. On 23 January 2020, the trial court adjudicated the Juveniles neglected as part of a Consent Adjudication Order. Results of a Child Medical Exam, reviewed at the Disposition Hearing also held on 23 January 2020, revealed that both Juveniles tested positive on a hair follicle test for methamphetamine and amphetamines. The level for Dylan was high, suggesting ingestion.

At the Disposition Hearing, the trial court set forth the reunification requirements for Respondent-Mother, including that she: obtain a Comprehensive Clinical Assessment and complete the recommendations of the assessment; submit to random drug screens; complete an anger management and domestic violence prevention program; complete parenting classes; pay child support; ensure the Juveniles' medical, dental, developmental, and treatment needs are met; visit with the Juveniles and demonstrate the ability to provide appropriate care; obtain stable

income; obtain and maintain a safe and appropriate residence; maintain contact with HCDSS and provide HCDSS with current contact information; and sign any releases requested by HCDSS. At a Permanency Planning Review hearing on 5 April 2021, the trial court added an additional requirement that Respondent-Mother cooperate with the Juveniles' therapist regarding parenting skills to learn to address the trauma suffered by the Juveniles.

Respondent-Mother completed a Comprehensive Clinical Assessment on 12 February 2020. Respondent-Mother completed the Substance Abuse Treatment Program in June 2020 and was directed by that program to attend an after-care treatment program as part of the reunification requirements set forth by the trial court. Respondent-Mother did not start the after-care program until a year later, attending seven meetings in the nineteen months following the recommendation. Respondent-Mother was directed to submit to sixty drug screens between January 2020 and January 2022; of the sixty screens, she submitted to eighteen, refused one, "no-showed" thirty-seven times, and could not complete four requested hair-follicle tests due to her shaved head. Respondent-Mother first advised the social worker she would not submit to the hair follicle tests due to Covid and that "she [did not] want people touching her hair." Later, Respondent-Mother stated she had issues growing her hair but did not provide a doctor's note evidencing any medical condition that affected hair growth. Furthermore, the Juveniles' father reported to the social worker that Respondent-Mother shaves her head to get out of the drug screens.

On 27 May 2020, Respondent-Mother completed the Triple P Parenting Program. The Juveniles continue to attend therapy due to witnessing substance abuse and instances of domestic violence, such as the father attempting to run over Respondent-Mother with a car during a camping trip, and multiple instances where Haley witnessed the father strike Respondent-Mother. The Juveniles experienced nightmares, dysregulation in the evenings, stress, low self-esteem, difficulty following rules, and anxiety about the future as a result of their exposure to domestic violence and substance abuse.

Respondent-Mother became involved with the Juveniles' therapy pursuant to a Permanency Planning Order. Respondent-Mother, however, did not participate in twelve out of twenty scheduled calls with the Juveniles' therapist, and the therapist was unable to meet with the family on three occasions due to Respondent-Mother's tardiness. The therapist reported the Juveniles struggle with Respondent-Mother's tardiness and absences from sessions. In October 2021, Haley wrote Respondent-Mother a letter stating she was sad when Respondent-Mother was late or did not attend visits, and that Respondent-Mother "[was not] doing what she needed to do in order to get her home." In the twenty-five months after HCDSS received custody of the Juveniles, Respondent-Mother was late to twenty-five visits with the Juveniles, failed to attend twelve visits, and had four visits cancelled due to her tardiness.

On 8 September 2021, Respondent-Mother completed a twenty-six-week Family Violence Intervention Program. Respondent-Mother continues to engage in

a relationship with the Juveniles' father. She gives the father rides around town and stated she helps the father "because [it is] better than the consequences of saying no to him." Respondent-Mother indicated to the social worker the father has threatened her, including stating he would "kick her ass." Respondent-Mother prepared a personalized domestic violence safety plan, part of which included a plan to obtain a domestic violence protection order. Despite this, during unannounced home visits on 22 October 2019 and 13 November 2019, the parents were found together in violation of the safety plan. At the 13 November 2019 visit, Respondent-Mother was found after hiding in the car for over an hour "because she knew that she and the father [were] not to be together with the [J]uveniles." During the same visit, the father admitted he had been staying with Respondent-Mother "for several weeks." At one point, the social worker advised Respondent-Mother to look into a restraining order, but Respondent-Mother was dismissive of the idea, saying it was "just a piece of paper."

Respondent-Mother reported employment at the Inn at Biltmore effective 25 January 2022 but never provided verification of the employment. Since HCDSS received custody of the Juveniles, Respondent-Mother only reported being employed from January 2020 to March 2020 at Highland Lake Inn, "working odd jobs" for which proof was never provided, and being employed from May 2021 to November 2021 at Biltmore Farms, where she was fired due to attendance issues. During this time,

Respondent-Mother collected unemployment and claimed she previously inherited money from her father, so she did not have to work.

On 18 September 2019, Respondent-Mother obtained housing for herself and the Juveniles. On numerous occasions, Respondent-Mother either denied the social worker access to the home for scheduled visits or requested the visits be rescheduled. During multiple unannounced home visits, the social worker observed Respondent-Mother's car in the driveway but was unable to make contact with her at the home. On 15 November 2021, the social worker completed a home visit during which two floor vents appeared to be covered with tape, and the back door to the home appeared to be damaged, "like someone had tried to pry the door." On 10 December 2021, the social worker and the Juveniles' Guardian *ad Litem* made an unannounced home visit. On the kitchen counter, they observed a hypodermic needle and a box with what appeared to be "a white powdery substance" inside. After this incident, Respondent-Mother terminated the visit.

On 11 October 2021, HCDSS filed a motion to terminate both parents' parental rights, which was heard on 27 January 2022. In its Order filed 21 February 2022, the trial court concluded there were two statutory grounds for termination of Respondent-Mother's parental rights: failure to make reasonable progress and neglect. The trial court held it was in the best interests of the Juveniles to terminate Respondent-Mother's parental rights. On 11 March 2022, Respondent-Mother filed written notice of appeal.

II. Jurisdiction

This Court has jurisdiction over Respondent-Mother's appeal from the Order pursuant to N.C. Gen. Stat. §§ 7B-1001(a)(6) and 7A-27 (2021).

III. Issues

The issues before this Court are whether the trial court erred in concluding that Respondent-Mother: (1) willfully failed to make reasonable progress in correcting the conditions leading to the removal of the Juveniles, and (2) neglected the Juveniles.

IV. Analysis

In this case, the trial court concluded grounds existed to terminate Respondent-Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) (willful failure to make reasonable progress) and N.C. Gen. Stat. § 7B-1111(a)(1) (neglect). We first examine the issue of failure to make reasonable progress.

A. Standard of Review

"Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020); *see also* N.C. Gen. Stat. § 7B-1110(a) (2021). "[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citation omitted); *see also* N.C. Gen. Stat. § 7B-1110(a). Thus, "if this Court upholds the trial court's order in which it concludes

that a particular ground for termination exists, then we need not review any remaining grounds.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

“We review a trial court’s adjudication that a ground exists to terminate parental rights under [N.C. Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.” *In re A.M. & E.M.*, 377 N.C. 220, 225, 856 S.E.2d 801, 806 (2021) (citations and quotation marks omitted). Moreover, “[f]indings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal. [W]e review only those findings necessary to support the trial court’s determination that grounds existed to terminate [the] respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019) (citations omitted). “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) (citations omitted and emphasis added).

B. Willful Failure to Make Reasonable Progress

Grounds for terminating parental rights exist under N.C. Gen. Stat. § 7B-1111(a)(2) 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. No parental rights, however, 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) (2021). “The willfulness of a parent’s failure to make reasonable progress toward correcting the conditions that led to a child’s removal from the family home is established when the parent had the opportunity to show reasonable progress but was unwilling to make the effort.” *In re A.S.D.*, 378 N.C. 425, 428, 861 S.E.2d 875, 879 (2021) (citation omitted). Furthermore, our Supreme Court has recognized that last minute improvements or progress made before a termination hearing may be insufficient to constitute reasonable progress. *Id.* at 434, 861 S.E.2d at 883 (internal citation omitted) (where the parent cited “progress made by her just prior to the termination of parental rights hearing, it was within the trial court’s authority to decide that these improvements were insufficient in light of the historical facts of the case”).

Respondent-Mother challenges several findings of fact of the trial court—which were used to support a conclusion that grounds existed to terminate Respondent-Mother’s parental rights based on a willful failure to make reasonable progress—as not having been supported by clear, cogent, and convincing evidence. We address each finding of fact in turn.

1. Failure to Maintain a Safe and Appropriate Residence

First, Respondent-Mother challenges the finding that “the mother has not maintained a safe and appropriate residence for the [J]uveniles.” Respondent-

Mother argues that although she was once homeless, she has now secured housing which the trial court previously found suitable for children. Additionally, Respondent-Mother provided testimonial and photo evidence that her landlord fixed the heating vents and back door which HCDSS expressed concerns about during a prior home visit. Respondent-Mother argues this establishes the trial court's finding regarding a safe and appropriate residence is not supported by clear, cogent, and convincing evidence. We disagree.

The trial court made the following findings of fact: Respondent-Mother either declined entry or requested to reschedule seven home visits. At three unannounced home visits by the social worker, Respondent-Mother's car was in the driveway, but she answered neither her phone nor the door. During the visit on 10 December 2021, a hypodermic needle was observed on the kitchen counter, as well as a box containing "a white powdery substance." Respondent-Mother stated the needle belonged to a diabetic neighbor, but there is no evidence to support that statement. Respondent-Mother also prematurely terminated the home visit after the social worker and Guardian *ad Litem* observed the needle. We reject Respondent-Mother's argument that the hypodermic needle would only be a safety concern if the children were present in the home at the time it was found. Respondent-Mother does not challenge the findings of fact regarding her compliance with home visits or the hypodermic needle found in her home, making them binding on appeal. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59. Respondent-Mother's history of drug abuse,

noncompliance with home visits and inexplicable possession of a hypodermic needle in her home is clear, cogent, and convincing evidence that Respondent-Mother has not maintained a safe and appropriate residence for the Juveniles. *See In re A.M.*, 377 N.C. at 225, 856 S.E.2d at 806.

2. Failure to Obtain Stable Income

Second, Respondent-Mother challenges the finding that “the mother has not obtained stable income sufficient to meet the family’s basic needs” as not supported by clear, cogent, and convincing evidence because as of the termination hearing, she had obtained full-time employment, making \$7.25 per hour, plus tips. We disagree.

Since the beginning of the case, Respondent-Mother’s work history has been limited and poorly documented. In its Order, the trial court found as fact the following: Respondent-Mother reported employment at Highland Lake Inn for a period of two months. Although she claimed to have worked landscaping and other odd jobs, Respondent-Mother never provided proof of that employment. Also during this time, Respondent-Mother collected unemployment and claimed she inherited money and did not have to work. Respondent-Mother worked at Biltmore Farms for a period of six months but was fired in November 2021 for attendance issues. Further, Respondent-Mother did not provide verification of her employment at the Inn at Biltmore, which is alleged to have begun 25 January 2022, only a month before the termination hearing.

In the two years after losing custody of the Juveniles, Respondent-Mother only reported employment for eight months. These findings have not been challenged and are binding on appeal. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59. Therefore, the findings of fact—which are deemed supported by competent evidence—tending to show Respondent-Mother has not worked consistently over a period of two years and has failed to verify reported employment constitute clear, cogent, and convincing evidence that Respondent-Mother has not obtained stable income sufficient to support the family. *See In re A.M.*, 377 N.C. at 225, 856 S.E.2d at 806.

3. Failure to Consistently Submit to Drug Screens

Respondent-Mother next claims there is no clear, cogent, and convincing evidence to support the finding that “the mother has not consistently submitted to drug screens.” Respondent-Mother argues she made “reasonable progress” in correcting this condition leading to the Juveniles’ removal because every drug screen she submitted was negative. We disagree.

The trial court found out of sixty requested drug screens between January 2020 and January 2022, Respondent-Mother “no-showed” thirty-seven times, refused one screen, and could not submit to four hair follicle tests, submitting to only eighteen screens total. Respondent-Mother does not challenge this finding, making it binding on appeal. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59.

Respondent-Mother also challenges the finding that “the requests for hair follicle screens could not be performed as the mother’s hair was shaved” as not

supported by clear, cogent, and convincing evidence. Respondent-Mother provided no evidence to support her claim that she has a medical condition that impacts her ability to grow hair, and the social worker testified Respondent-Mother stated she simply did not want someone touching her hair. The Juveniles' father also reported to the social worker that Respondent-Mother shaves her head to get out of the drug screens.

As HCDSS correctly notes in its brief, without Respondent-Mother submitting to regular drug screens, the trial court could not conclude that she had overcome her drug problem. Respondent-Mother's unwillingness to submit to hair follicle screens and her absence from a majority of the requested drug screens constitutes clear, cogent, and convincing evidence that Respondent-Mother "has not consistently submitted to drug screens." *See In re A.M.*, 377 N.C. at 225, 856 S.E.2d at 806.

4. Attendance at Visits and the Family Violence Intervention Program

Finally, Respondent-Mother challenges the findings related to her attendance and consistency with making progress in her case plan: (1) that she did not attend the Family Violence Intervention Program consistently and was often late, resulting in her being discharged from the program; (2) that she was "very inconsistent" with her visits with the Juveniles; and (3) that she was not consistent with her in-person appointments with the Juveniles' therapist. Respondent-Mother argues her inconsistent attendance is not enough to show a lack of reasonable progress because she is working to comply with other provisions of her case plan. We disagree.

In its Order, the trial court made the following findings of fact: Respondent-Mother did not complete twelve out of twenty scheduled calls with the Juveniles' therapist. Three times the Juveniles' therapist was unable to work with the family due to Respondent-Mother's tardiness, which the therapist noted was negatively impacting the Juveniles. Furthermore, in the past twenty-five months, Respondent-Mother was late for in-person visits twenty-five times, absent twelve times, and had at least four appointments cancelled due to tardiness. The Juveniles' therapist reported the Juveniles struggled when Respondent-Mother did not show up for visits because the scheduled visits disrupted the Juveniles' schedules, only for Respondent-Mother to not show. These additional findings have not been challenged by Respondent-Mother and are binding on appeal. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58–59. Respondent-Mother's discharge from the program and limited participation in therapy is clear, cogent, and convincing evidence that she did not attend the Family Violence Intervention Program consistently, and that she was inconsistent with visits with the Juveniles and the Juveniles' therapist. *See In re A.M.*, 377 N.C. at 225, 856 S.E.2d at 806.

5. Failure to Make Reasonable Progress

When a parent has the opportunity to make corrections but proves unwilling to do so, this satisfies the “willfulness” element of a parent's failure to make reasonable progress in correcting conditions that led to a child's removal. *See In re A.S.D.*, 378 N.C. at 428, 861 S.E.2d at 879. There is clear, cogent, and convincing

evidence that Respondent-Mother had ample opportunity to demonstrate she made reasonable efforts to correct the conditions which led to removal. Respondent-Mother did not challenge multiple detrimental findings of fact, supporting a conclusion that she failed to make reasonable progress on her case plan. Based on the forgoing, we conclude she has failed to make reasonable progress under the circumstances. *See In re A.M.*, 377 N.C. at 225, 856 S.E.2d at 806. Having concluded grounds exist to support the trial court's termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(2), we need not review Respondent-Mother's remaining argument as to neglect. *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71.

V. Conclusion

The trial court's findings of fact are supported by clear, cogent, and convincing evidence. These findings in turn support the conclusion of law that Respondent-Mother failed to make reasonable progress in correcting the conditions leading to removal. We therefore affirm the trial court's Order terminating Respondent-Mother's parental rights.

AFFIRMED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).