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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-603

Filed 07 March 2023

Gaston County, Nos. 19 JT 144-45

IN THE MATTER OF: E.D.N., D.A.N.

Appeal by respondent-mother from order entered 26 April 2022 by Judge John K. Greenlee in Gaston County District Court. Heard in the Court of Appeals 21 February 2023.

Elizabeth Myrick Boone, for petitioner-appellee Gaston County Department of Health and Human Services.

W. Michael Spivey for respondent-mother appellant.

ARROWOOD, Judge.

Respondent-mother (“respondent”) appeals from the trial court’s order terminating her parental rights to E.D.N. (“Edward”) and D.A.N. (“Dan”)¹ (collectively “the children”). Counsel for respondent has filed a no-merit brief under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. For the following reasons, we affirm the trial court’s order.

¹ Pseudonyms are used, consistent with those in the briefs on appeal, to protect the juveniles’ identities and for ease of reading.

I. Background

Edward was born in December 2012 and Dan was born in October 2015 to respondent. Although respondent was married at the time of the children's birth, her husband was excluded as the biological father and upon their divorce an order of nonpaternity was issued. The biological father of the children remains unknown.

Although there was DSS history with respondent and the children in Gaston County for respondent's "substance abuse issues and lack of supervision[.]" Orange County DSS became involved in April 2019. At that time, respondent was "participating in a residential facility treatment" program at UNC Horizons. Respondent was dropped off at Dan's school "to attend an award program" and was supposed to call Horizons "for return transportation[.]" When respondent did not contact the program, and could not be reached by phone, Horizon staff had to pick the children up from their school programs. When Horizon staff finally got in touch with respondent, she admitted she had consumed alcohol and "reported she was on a bench in Durham." Although Horizon staff tried to locate respondent that night, she was not found and nonsecure custody orders were obtained for the children on 15 April 2019.

On 8 May 2019, respondent entered into a case plan with DSS, which required her to attend weekly visitations with the children, refrain from illegal substances, complete parenting classes, and participate in treatment at a facility for her substance abuse issues, among other things. On 3 June 2019, the children were

adjudicated as neglected and the DSS case was transferred to Gaston County. Since then, there have been nine permanency planning hearings (“PPHs”) for the children, who have remained in DSS custody. Throughout that time, respondent consistently failed to make adequate progress toward the case plan and “the [c]ourt has never concluded at any hearing that [respondent] has made reasonable progress to warrant” the children’s return to her custody.

At the second PPH in December 2019, the court report indicated respondent had four opportunities to admit herself to a treatment facility from September 2019 to October 2019 but had failed to do so. Respondent failed to attend any of her drug screens and was incarcerated at the time of the hearing. At the third PPH in March 2020, the court report stated respondent had an intake appointment at a substance abuse treatment facility, but had failed to attend, had again been arrested, and was incarcerated at the time of the hearing. While incarcerated, respondent’s hair follicle drug screen tested positive for cocaine. At this point, the court sanctioned a “primary permanent plan” of adoption for the children.

Although respondent entered a treatment facility in April 2020, she transferred to another facility on 30 June 2020, and “as soon as the [14 day] quarantine was over, [respondent] left [her daughter, who is not part of this case,] at the facility to go buy alcohol[,]” and did not return. DSS was notified, and respondent’s mother had to pick up the daughter. Respondent was arrested shortly thereafter in July 2020.

Although respondent entered another treatment facility in late 2020, she was discharged by the facility on 6 January 2021 due to a “relapse with alcohol[.]” Respondent reported she entered a treatment program in January 2021, and then a different treatment facility in February 2021 but this could not be confirmed. In May 2021, respondent was located in Gaston County jail. Although respondent was released from custody in November 2021, she failed to attend the PPH held on 7 December 2021. Furthermore, her drug screen upon release was “positive for cocaine metabolites.”

On 15 March 2021, DSS filed a petition for termination of parental rights against respondent and the unknown father. The petition alleged grounds for termination of parental rights existed under N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2). The matter came on for a hearing in the Gaston County District Court on 13 December 2021, Judge Greenlee presiding.

On the date of the hearing, respondent’s attorney notified the court respondent could not attend due to lack of transportation and requested a continuance. The trial court found respondent “was given sufficient notice” of the hearing to arrange transportation and, furthermore, she lived only three to six miles from the courthouse, and was on a bus line. Therefore, the motion to continue was denied and the hearing proceeded without respondent.

At the hearing, social worker Caitlin Foster (“Ms. Foster”) testified on behalf of DSS. Ms. Foster testified that at the time of the hearing, the children had been in

DSS custody for close to thirty months. Ms. Foster further testified that respondent was never able to complete treatment in a facility due to relapses, never attended parenting classes, and did not maintain connections with the children. Respondent last visited with the children in-person in December 2021, but before that her last in-person visit was in August of 2020. Furthermore, respondent never obtained safe and appropriate housing, was not able to consistently stay employed and provide income, and never corrected the issues that led to the children's removals.

Ms. Foster also testified at the best interest stage of the hearing. Ms. Foster opined that termination of respondent's parental rights would assist in accomplishing the primary plan of adoption, and that the parental bond between respondent and the children had "severely diminished" due to respondent not attending visitations. Ms. Alyssa Guffey ("Ms. Guffey"), the adoption social worker, also testified. Ms. Guffey stated that the likelihood of adoption was "very high with the right services in place[.]" and she did not think the children's behavioral issues would be a barrier to their adoption.

Following the hearing, the trial court terminated the parental rights of respondent and unknown father in open court and in an order filed 26 April 2022. In the order, the trial court found respondent did not submit to all of her drug screens, had failed to remain in a treatment program or address her substance abuse problems, had been arrested seven times between June 2019 and October 2020, attended one out of six PPHs, and had attended around half of the offered visits with

the children. Furthermore, the trial court found it was in the best interest of the children to terminate respondent's parental rights to the children. Respondent filed a notice of appeal 11 May 2022.

II. Discussion

Respondent's appellate counsel, after a "thorough review of the record on appeal[.]" determined there were "no issues of merit on which to base an argument for relief[.]" Therefore, pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure, he has filed a no-merit brief. Although respondent was advised of her right to file her own brief directly with the Court, respondent has failed to do so. In the no-merit brief, respondent's counsel raised two issues: (1) whether the trial court's findings of fact were supported by the evidence and support its conclusions of law, and (2) whether the trial court abused its discretion by terminating mother's parental rights.

A. Standard of Review

This Court must "conduct an independent review of the issues set out in the no-merit brief filed by respondent's counsel[.]" *In re L.E.M.*, 372 N.C. 396, 402, 831 S.E.2d 341, 345 (2019). Our appellate courts "review a trial court's adjudication of grounds to terminate parental rights 'to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.'" *In re I.J.W.*, 378 N.C. 17, 21, 859 S.E.2d 148, 151 (2021) (citation 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) (citation omitted). “The trial court’s assessment of a juvenile’s best interest at the dispositional stage is reviewed only for abuse of discretion.” *In re Z.L.W.*, 372 N.C. 432, 435, 831 S.E.2d 62, 64 (2019) (citations omitted).

B. Termination of Parental Rights

The trial court can terminate parental rights “upon a finding of one or more” of the factors listed in N.C. Gen. Stat. § 7B-1111(a). The relevant portion of the statute allows termination if:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) 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)(1)-(2) (2022). “In termination of parental rights proceedings, the trial court’s finding of any one of the . . . enumerated grounds is sufficient to support a termination.” *In re N.T.U.*, 234 N.C. App. 722, 733, 760 S.E.2d 49, 57, *disc. review denied*, 763 S.E.2d 517 (2014) (citation and internal quotation marks omitted). “Thus, on appeal, if we determine that any one of the statutory

grounds enumerated in [N.C. Gen. Stat.] § 7B-1111(a) is supported by findings of fact based on competent evidence, we need not address the remaining grounds.” *Id.* (citation omitted). Accordingly, we limit our review to N.C. Gen. Stat. § 7B-1111(a)(2) (“subsection (a)(2)”).

Under subsection (a)(2), grounds for termination exist if the juvenile is “willfully” left in foster care for more than twelve months without respondent making reasonable progress in addressing the issues which led to the juvenile’s removal. N.C. Gen. Stat. § 7B-1111(a)(2). “Willfulness may be found where a parent has made some attempt to regain custody of the child but has failed to exhibit reasonable progress or a positive response toward the diligent efforts of DSS.” *In re J.W.*, 173 N.C. App. 450, 465, 619 S.E.2d 534, 545 (2005) (citation and internal quotation marks omitted), *aff’d*, 360 N.C. 361, 625 S.E.2d 780 (2006). “[A] respondent’s prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions[.]” *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93 (2004) (citation and internal quotation marks omitted).

Here, the trial court found “[t]he juveniles have been in foster care for approximately thirty-one (31) months.” Furthermore, despite respondent’s entry into programs to address her substance abuse, the reason DSS initially became involved with the children, she was never able to successfully remain in a program and was consistently “discharged for alcohol or drug use or non-compliance.” Although respondent knew one of the conditions of her case plan was to remain free from

substances, she demonstrated an inability to address her substance abuse. Thus, respondent's inability to successfully address her substance abuse problems supports a finding of willfulness under subsection (a)(2). *See id.* Accordingly, the trial court's conclusion that grounds existed to terminate respondent's parental rights was supported by clear, cogent, and convincing evidence.

Following an adjudication, the trial court must determine "whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2022). In making this decision, the trial court must consider the following factors:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110 (a).

Here, a review of the record and the transcript show the trial court considered and made written findings regarding the required factors. The trial court considered the children's age and found the bond between the children and respondent had

“diminished due to the limited amount of visits” by respondent. Furthermore, the trial court considered the likelihood of adoption, and determined the termination of respondent’s parental rights would aid in accomplishing the permanent plan of adoption. Accordingly, the trial court did not abuse its discretion in finding termination of respondent’s parental rights was in the children’s best interest.

III. Conclusion

For the foregoing reasons, we affirm the trial court’s order terminating respondent’s parental rights.

AFFIRMED.

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).