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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-482

Filed 21 March 2023

New Hanover County, Nos. 20 JT 45, 20 JT 46

IN THE MATTERS OF: A.L.O AND A.B.O.

Appeal by respondent-mother from order entered 31 March 2022 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 22 February 2023.

Jane R. Thompson for petitioner-appellee New Hanover County Department of Social Services.

Michelle FormyDuval Lynch for guardian ad litem.

Mercedes O. Chut for respondent-appellant mother.

DILLON, Judge.

Respondent Brittani Amanda Davis (“Mother”) is the mother of minor children A.L.O. (“Allen”)¹ and A.B.O. (“Anna”). She appeals from the trial court’s orders terminating her parental rights to Allen and Anna on two grounds: (1) willful failure

¹ Pseudonyms are used to protect the juveniles’ identities and for ease of reading.

to make reasonable progress in correcting the conditions which led to the children's removal from the home and (2) neglect. We affirm.

I. Background

On 17 March 2020, the New Hanover County Department of Social Services (DSS) received a report of domestic violence between Mother and her boyfriend, Mr. Wixon. According to Mother, the two were arguing around midnight that evening. To prevent Mr. Wixon from walking out the door, Mother grabbed his leg. Mr. Wixon attempted to shake her off, kicking her in the back of the head, and causing her to fall backwards. Mother suffered a head laceration that required three stitches. Mr. Wixon was charged with assault on a female.

After a social worker from DSS visited the home and investigated Mother, DSS filed a petition alleging neglect and was granted nonsecure custody of Allen and Anna. Mother was given a case plan, which, among other things, required her to maintain a stable income and residence, complete a psychological evaluation, attend parenting education classes, complete a clinical assessment of her substance abuse, maintain a sober lifestyle, and submit to random hair and urine screens.

By the time the case was reviewed in September of 2020, both Allen and Anna had been placed in foster care. Both children needed speech and occupational therapy due to developmental delays and issues with bedwetting. Mother did not attend the hearing.

On 11 September 2020, Mother's visitation with Allen and Anna was

suspended due to allegations of sexual abuse. The report, which was received by the Sampson County DSS, alleged that Mother forced the children to lie naked on a bed and touch each other while she videotaped them.

At a review hearing on 7 January 2021, Mother was present. By this time, the Sampson County DSS had substantiated the sexual abuse claim against Mother. Her case plan was updated to require her to complete a Sex Offender Specific Evaluation, and visits remained suspended.

On 28 May 2021, DSS filed a petition to terminate Mother's parental rights to Allen and Anna. On 31 March 2022, the trial court entered an order ("Order") terminating Mother's parental rights. Mother timely appealed.

II. Analysis

On appeal, Mother challenges the trial court's conclusion that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2).

We review an order terminating parental rights by determining whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the trial court's conclusions of law. *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019). The trial court's conclusions of law are reviewed *de novo*. *State v. Nicholson*, 371 N.C. 284, 288, 813 S.E.2d 840, 843 (2018). Unchallenged findings of fact "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).

Here, the trial court concluded that there were two statutory grounds for terminating Mother's parental rights, including her failure to make reasonable progress under N.C. Gen. Stat. § 7B-1111(a)(2). Subsection 7B-1111(a)(2) authorizes termination of parental rights if "[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.G.S. § 7B-1111(a)(2) (2021).

Mother's primary argument is that the only circumstance leading to the children's removal was the domestic violence altercation with Mr. Wixon. As a result, she succeeded in making reasonable progress on her case plan because she completed her domestic violence empowerment classes as ordered by the trial court. She contends that the remainder of her case plan components were "extraneous" and did not relate to the conditions that led to the removal of Allen and Anna.

Mother is correct that there must be "a nexus between the components of the court-approved case plan... and the conditions that led to the child's removal." *B.O.A.*, 372 N.C. at 385, 831 S.E.2d at 314. However, Mother erroneously requests us to construe the nexus requirement more narrowly than our Supreme Court has held.

In *B.O.A.*, a social worker developed a case plan for the mother following an episode of domestic assault against her by the child's father. The case plan required

the mother to, among other things, obtain a mental health assessment, complete domestic violence counseling, complete a parenting class, remain drug-free, submit to random drug screenings, and maintain stable income for at least three months. *Id.* at 373-74, 831 S.E.2d at 307. When the mother failed to meet the terms of her case plan, the trial court terminated the mother's parental rights under 7B-1111(a)(2). In doing so, our Supreme Court reasoned that it is not necessary that a direct relationship exists between each element of the case plan and the circumstances that led to the child's removal from the home. On the contrary, the primary consideration is whether the "objectives sought to be achieved by the case plan provision in question address issues that contributed to causing the problematic circumstances that led to the juvenile's removal from the parental home." *Id.* at 384, 831 S.E.2d at 314. The court further reasoned that:

The adoption of a contrary approach would amount to turning a blind eye to the practical reality that a child's removal from the parental home is rarely the result of a single, specific incident and is, instead, typically caused by the confluence of multiple factors, some of which are immediately apparent and some of which only become apparent in light of further investigation.

Id.

Here, the elements of Mother's case plan are like that in *B.O.A.* In its permanency planning order, the trial court required Mother to comply with the following requirements:

- i. Shall maintain stable employment and/or sufficient

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to support the household;

- ii. Shall obtain and maintain a safe and stable residence appropriate for the children;
- iii. Shall complete psychological evaluation and follow recommendations;
- iv. Shall attend parenting education and demonstrate skills learned;
- v. Shall engage in couple's therapy with Mr. Wixon (when recommended by her individual provider);
- vi. Shall participate in empowerment through Open Gate;
- vii. Shall follow the recommendations of her most recent CCA, including but not limited to: psychiatric services, medication management, SAIOP, and attend weekly outpatient individual therapy;
- viii. Shall complete the Sex Offender Assessment and comply with any and all recommendations;
- ix. Shall sign releases for the Department and the Guardian Ad Litem;
- x. Shall submit to random hair and urine drug screens with the Department and demonstrate a sober lifestyle.

(R at 130-31)

In its Order, the trial court found the following facts, which Mother does not challenge: that during her clinical assessment, Mother reported to using Subutex and/or Suboxone which she was obtaining illicitly; that she failed to complete several recommended programs including the Substance Abuse Intensive Outpatient

Program and the Intensive Outpatient Program; that she was discharged from therapy due to lack of engagement; that she only complied with 3 of 24 requested drug screens; that she only re-enrolled and consistently attended parenting classes once the TPR action was filed; that she did complete empowerment classes; and that she failed to complete the Sex Offender Specific Evaluation.

Although not all the above case plan components relate directly to the event of domestic violence that triggered DSS' initial involvement with Allen and Anna, each component *does* address different issues that culminated in the removal of Allen and Anna from Mother's care. As a result, we conclude that Mother was required to show reasonable progress towards her case plan to maintain parental rights to Allen and Anna. *Id.* at 385, 831 S.E.2d at 314.

Of course, Mother was not required to fully adhere to each element of her case plan to maintain parental rights to Allen and Anna. As our Supreme Court has noted, a parent is not required to "completely remediate the conditions that led to removal." *In re J.S.*, 374 N.C. 811, 819, 845 S.E.2d 66, 74 (2020). However, a parent seeking to avoid termination of parental rights is required to show progress towards improving her situation. *Id.* at 815, 845 S.E.2d at 71 (noting that a parent's "prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness 'regardless of her good intentions,' and will support a finding of lack of progress . . . sufficient to warrant termination of parental rights under section 7B-1111(a)(2).")

Here, Mother failed to show even reasonable progress towards the objectives in her case plan. As the court found, and as stated previously, Mother did not consistently attend any of the recommended programs or sessions, except the empowerment classes. She continued to use drugs illicitly, did not comply with 21 of the 24 requested drug screens, and failed to complete the Sex Offender Specific Evaluation. Mother does not challenge these findings, and we are bound by them in this appeal. *T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58.

As a result, we conclude that the trial court did not err when it terminated Mother's parental rights under 7B-1111(a)(2). Because an adjudication of any single ground under N.C. Gen. Stat. § 7B-1111(a) is sufficient to support an order terminating parental rights, we decline to address the additional ground of neglect. *J.S.*, 374 N.C. at 821, 845 S.E.2d at 75.

III. Conclusion

Although many of the components of Mother's case plan were not directly related to the domestic violence incident that triggered removal of the children, they were part of the "confluence of multiple factors" that made the removal of the children appropriate. *B.O.A.*, 372 N.C. at 384-85, 831 S.E.2d at 313-14. Because Mother failed to make reasonable progress towards the requirements in her case plan, we affirm the trial court's order terminating her parental rights.

AFFIRMED.

Judges CARPENTER and STADING concur.

IN RE: A.L.O. AND A.B.O.

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Report per Rule 30(e).