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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-752

Filed 16 May 2023

New Hanover County, Nos. 20 JT 188, 20 JT 189

IN THE MATTERS OF A.N.T. AND A.M.T.

Appeal by respondent-mother from order entered 17 May 2022 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 26 April 2023.

Garron T. Michael for petitioner-appellee New Hanover County Department of Social Services.

Troutman Pepper Hamilton Sanders, LLP, by Mary K. Grob for guardian ad litem.

Freedman Thompson Witt Ceberio & Byrd, PLLC, by Christopher M. Watford, for respondent-appellant mother.

DILLON, Judge.

Respondent Ashley Rivera (“Mother”) is the mother of minor children A.N.T. (“Amy”)¹ and A.M.T. (“AJ”). She appeals from the trial court’s order terminating her parental rights to Amy and AJ on two grounds: (1) willful failure to make reasonable

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

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

I. Background

Mother has a history of domestic violence with Amy and AJ's father, Rashaud Thompson ("Father"). Father's parental rights are not at issue in this appeal.

Over the years, the New Hanover Department of Social Services ("DSS") received multiple reports about the family concerning issues involving Mother of mental health, domestic violence, parenting.

On 27 September 2020, a physical altercation occurred between Mother and Father in which both parties required medical attention. The following week, on 2 October 2020, DSS assumed legal custody of Amy and AJ, and the children were subsequently placed in the care of their maternal grandmother.

The following month, in November 2020, the trial court concluded that both Amy and AJ were neglected juveniles and that it was in their best interests to continue residing with their grandmother.

In December 2020, the trial court entered an order, establishing for Mother a case plan which required her to: (1) comply with the terms of her Family Services Agreement with DSS, (2) complete a comprehensive clinical assessment and comply with any and all recommendations for treatment, (3) participate with the Methodist Home for Children in-home services, (4) continue participation in the therapeutic and

parent coaching sessions through the Intensive Reunification Program, (5) complete an “empowerment” program with Open Gate, (6) submit to random urine and hair follicle drug screens, (7) execute releases of information of all service providers, and (8) obtain and maintain sufficient and stable housing and income.

Over the next year, Mother made sporadic progress towards her case plan but ultimately “failed to exhibit any lasting change in her parenting abilities.”

On 10 December 2021, DSS filed a petition to terminate Mother’s parental rights to Amy and AJ. On 17 May 2022, the trial court entered an order (“Order”) terminating Mother’s parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) and (a)(2). Mother timely appeals.

II. Analysis

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 (a)(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, one of which based on her failure to make reasonable progress under Subsection 7B-1111(a)(2). This subsection authorizes termination of parental rights when "[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) (2021).

Mother concedes that she willfully left Amy and AJ in foster care for the statutory 12-month period. Thus, the only issue is whether Mother made "reasonable progress" to correct the conditions that led to their removal.

1. Whether the trial court applied the correct standard

Mother first argues that the trial court used the incorrect legal standard when it substituted the phrase "reasonable progress" with the language "sufficient progress" in its Order, where the trial court concluded:

[Mother] willfully left the juvenile[s] in foster care for a period of more than twelve months without making sufficient progress to eliminate the need for foster care placement.

However, both our Court and our Supreme Court have used these phrases "reasonable progress" and "sufficient progress" interchangeably in affirming the termination of a parent's rights under Subsection 7B-1111(a)(2). *See In re D.L.W.*,

368 N.C. 835, 839, 788 S.E.2d 162, 165 (2016) (affirming termination of parental rights based on a finding that both parents “willfully left the juveniles in foster care for more than twelve months without making *sufficient* progress in correcting the conditions that led to removal”) (emphasis added); *In re Fletcher*, 148 N.C. App. 228, 235-36, 558 S.E.2d 498, 502 (2002) (affirming termination of a mother’s parental rights because she “did not make *sufficient* progress in correcting conditions that led to the child’s removal”) (emphasis added); *In re D.H.H.*, 208 N.C. App. 549, 555, 703 S.E.2d 803, 807 (2010) (affirming termination of parental rights and stated that “[i]ndeed, had Respondent-Father made *sufficient* progress, Petitioners would not have been able to prove that termination of Respondent-Father’s parental rights was justified pursuant to N.C. Gen. Stat. § 7B-1111(a)(2)”) (emphasis added). Thus, we conclude that the trial court did not err in this regard.

2. The trial court’s conclusion of willfulness

Next, Mother contends that the trial court erred when it did not specifically find as fact that Mother’s conduct during the statutory period was willful. Instead, the trial court included its finding of willfulness in the conclusions of law portion of its Order. Mother relies on *In re J.S.*, in which our Supreme Court stated that “[t]he determination that respondent acted ‘willfully’ is a finding of fact rather than a conclusion of law.” *In re J.S.*, 374 N.C. 811, 818, 845 S.E.2d 66, 72-73 (2020). In *J.S.*, the trial court found that the respondent-mother had acted willfully in failing to make

reasonable progress pursuant to § 7B-1111(a)(2), but just as in the case *sub judice*, included its finding of willfulness in its conclusions of law instead of findings of fact.

Mother is correct that willfulness under Subsection 7B-1111(a)(2) is a finding of fact. However, our Supreme Court also stated in *J.S.* that “the trial court’s placement of [its] finding [of willfulness] in its conclusions of law is immaterial to our analysis.” *J.S.*, 374 N.C. at 818, 845 S.E.2d at 73. Rather, the reviewing court is “to apply the appropriate standard of review to a finding of fact or conclusion of law, regardless of the label [] given by the trial court.” *Id.* Thus, any mislabeling of the finding on willfulness by the trial court in its Order in the present case is not reversible error.

3. Termination under § 7B-1111(a)(2)

Mother next argues that she made reasonable progress pursuant to § 7B-1111(a)(2) such that termination of her parental rights was erroneous. However, she does not specifically challenge the trial court’s factual findings that support termination under § 7B-1111(a)(2). Instead, the crux of Mother’s arguments seems to rely on the sporadic progress she made during the requisite 12-month period.

We note, and the record demonstrates, that Mother did make some progress towards her case plan, including periodically attending therapy, participating in various parenting programs, and apparently ceasing contact with Father by March 2021 (though she lied about her contact with him between October 2020 and March 2021). However, our Supreme Court has noted 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).” *J.S.*, 374 N.C. at 815, 845 S.E.2d at 71. Additionally, the trial court found that even “[d]uring compliance periods, [Mother] was still unable to demonstrate her ability to provide safe and appropriate care for the children.”

Accordingly, despite some efforts in the right direction, the trial court’s ultimate determination is supported by its findings. Specifically, the trial court found Mother failed to “adequately address her mental health issues, continued parenting deficiencies and her inability to provide appropriate care for her children.” For example, Mother was given ample opportunity to show improvements in her parenting abilities during her unsupervised visits with Amy and AJ, yet failed to do so. Despite being instructed to bring toys, diapers, and wipes to her unsupervised visits, she failed to do so and “was unprepared when the children’s diapers need[ed] to be changed.” The trial court also found that Mother “failed to adequately feed the children several times”, and that “[Amy and AJ] would return to the placement providers['] home hungry.” On the one occasion Mother did provide food, she ordered pizza despite knowing that AJ was lactose intolerant. The trial court also found, based on testimony of the social worker involved with the case, that “[t]here was not adequate food for the children in the home during unsupervised visits.” Mother was

also repeatedly instructed to bathe Amy and AJ during her unsupervised visits yet failed to do so.

The trial court also found, and Mother does not challenge, that during the summer of 2021, Mother was paid to transport a male passenger to Wilmington, North Carolina, where the passenger allegedly committed a double homicide. Due to Mother's involvement in transporting the passenger, Amy, AJ, and she received death threats. When DSS and the Guardian Ad Litem expressed concerns to Mother over the feeding issues, basic parenting issues, and the recent threats to Amy and AJ, Mother "minimized any past, present or future threats." The trial court found in finding 94, that when Mother was "warned about having continued contact with gang affiliated individuals that initiated the threats, [Mother] reported to [the social worker] that all of her friends are in gangs." In finding 93, the trial court found that despite hearing these concerns, Mother failed to make the improvements recommended to her by the social worker.

In addition to the findings discussed above, the trial court made several more findings to support its termination pursuant to § 7B-1111(a)(2): Mother would become distracted by personal events and cease visiting with her children on a regular basis; Mother failed to attend critical appointments for AJ's treatment; Mother lacked insight into how her aggressive and erratic behavior negatively impacted Amy and AJ; Mother consistently chose to travel and hang around friends rather than spend time with Amy and AJ; Mother "refused to take medication to treat

her mental health diagnosis and [did] not recognize a need for medication”; and Mother did not comply with the drug screens requested by the social worker.

We conclude these findings are supported by clear, cogent, and convincing evidence and are sufficient to demonstrate that, although Mother made some effort towards regaining custody of the children, she failed to make consistent efforts to spend time with them, refused to take steps towards addressing her mental health diagnosis, did not take responsibility for feeding, clothing, or bathing the children, and minimized the threats targeted towards her children by gang members. Thus, the trial court’s findings support its conclusion that Mother willfully failed to make reasonable progress to correct the conditions that led to the removal of the children from her custody pursuant to § 7B-1111(a)(2).

Because an adjudication of any single ground under § 7B-1111(a) is sufficient to support an order terminating parental rights, we need not address the additional ground of neglect. *J.S.*, 374 N.C. at 821, 845 S.E.2d at 75.

III. Conclusion

Because there was sufficient evidence before the trial court that Mother failed to make reasonable progress towards correcting the conditions that led to the removal of Amy and AJ, we conclude that the trial court did not err when it terminated Mother’s parental rights under § 7B-1111(a)(2).

AFFIRMED.

Judges WOOD and FLOOD concur.

IN RE: A.N.T. AND A.M.T.

Opinion of the Court

Report per Rule 30(e).