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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-505

Filed 16 May 2023

Johnston County, No. 19 JT 299

IN THE MATTER OF: A.M.B.

Appeal by Respondent from an order entered 9 March 2022 by Judge Joy Jones in Johnston County District Court. Heard in the Court of Appeals 26 April 2023.

*Holland & O'Connor, P.L.L.C., by Jennifer S. O'Connor, for petitioner-appellee.*

*Parker Poe Adams & Bernstein LLP, by Marie V. Farmer, for Guardian ad Litem.*

*David A. Perez, for respondent-appellant Mother.*

WOOD, Judge.

Respondent-Mother (“Mother”) appeals from an order terminating her parental rights to her child, Amy.<sup>1</sup> After careful review of the record and applicable law, we affirm the trial court’s order.

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<sup>1</sup> A pseudonym is used to protect the identity of the juvenile and for ease of reading.

## **I. Factual and Procedural Background**

Johnston County Department of Social Services (“DSS”) became involved with Amy after her birth on 29 December 2019. DSS received two Child Protective Services reports alleging neglect of Amy by Mother. The reports alleged that, at the time of Amy’s birth, Mother was living in a hotel, did not have finances to provide for the necessities for a newborn, and did not have a car seat, diapers, or clothing for a newborn. In discussions with a DSS worker, Mother stated she did not know where she and Amy would go once they left the hospital. On 31 December 2019, DSS filed a juvenile petition alleging Amy to be neglected and dependent and obtained non-secure custody of the child. Amy was placed in foster care. On 8, 15, and 22 January 2020, the trial court held non-secure custody hearings where Mother consented to DSS’s recommendation for Amy to remain in its custody. At the 22 January 2020 hearing, Mother waived further non-secure custody hearings.

On 18 February 2020, Mother completed a psychological evaluation. Mother was not diagnosed with any mental health disorders and was found to have an average IQ, but DSS recommended that she participate in a parent education course. The same day, Mother had a visitation with Amy and entered into an out-of-home family services agreement. Mother agreed to complete a psychological evaluation, follow all recommendations, and obtain stable housing and employment.

The adjudication hearing on the abuse and neglect petition was held on 11 March 2020. The court adjudicated Amy neglected and dependent. The court found

that: (1) Mother had been living in various shelters, motels, and tents with her boyfriend; (2) while Mother had employment with Office Max and was renting a hotel room currently, she had been advised that the store would close in January 2020 and would need to seek additional employment; (3) Mother planned on looking for homeless shelters for herself and Amy, but did not have the transportation to do so; (4) Mother did not have supplies to care for Amy and did not have the financial means to obtain formula to feed her daughter; and (5) Mother was unable to identify Amy's father at the time the juvenile petition was filed. The disposition hearing was held on the same date. The court placed Amy in the custody of DSS and she remained in foster care. The court ordered DSS to continue working toward reunification and permitted Mother to have visitations with Amy twice monthly. Mother did not appeal the adjudication or the disposition orders.

On 20 May 2020, a Permanency Planning hearing was conducted. The trial court found that Mother "has only recently begun to . . . address the identified risk issues due to the pandemic." The trial court found that Mother completed the psychological evaluation, but "has not begun parenting classes," "does not have housing and is continuing to live in a tent in the woods," and "does not have employment." She named an individual as Amy's father though paternity had not yet been established. The court further found that DSS attempted to assist Mother "with information concerning local shelters for housing." The court also found Mother had visited Amy since the last hearing and the visit went well. The court noted

Mother “appears more comfortable with each visit, although she still requires guidance and support from the social worker” and, due to the pandemic, she “has had video visits when she is able to gain access to the internet.” A primary permanent plan of reunification and a secondary permanent plan of guardianship with a relative or other suitable person was established. While Mother was scheduled to have an in-person visitation with Amy on 18 August 2020, her first in-person visit since March 2020, she did not attend. Mother did not contact DSS until the end of October 2020 to schedule another visit.

Mother attended a visit with Amy on 20 November 2020. On 1 December 2020, Mother, who continued to reside in a tent with her boyfriend, told DSS workers she was saving up money in order to obtain stable housing and planned to contact Selma Housing Authority to apply for housing on her next day off from work. Mother reported to DSS that she was employed at Denny’s and that her first day was 11 November 2020. A 9 December 2020 permanency planning hearing was continued due to the pandemic court closure. Amy continued in non-secure custody with DSS. On 15 December 2020, Mother and her boyfriend completed the intake process for a parenting education course. Mother visited in person with Amy twice in December 2020 and once virtually in January 2021.

Mother completed two parenting education classes on 5 and 12 January 2021, while her boyfriend completed a class on 7 January 2021. On 27 January 2021, Mother reported to DSS that she and her boyfriend had moved to Arkansas and were

residing with a friend. Mother reported the friend would help them “get on their feet while they get their daughter back” and that she would not be coming back to North Carolina. Mother reported she was not employed at this time. In February 2021, Mother engaged in a virtual visitation with Amy.

A permanency planning hearing was held on 10 March 2021. The trial court found that DSS had worked with Mother for over a year and no progress had been made to resolve the identified risk issues. Specifically, the trial court found that she had not obtained or maintained appropriate and stable housing or employment. The trial court further found that DSS provided Mother a list of housing resources, “which she failed to utilize, indicating she would rather stay with her boyfriend,” and that her current residence in Arkansas, where she resided with a “previous boyfriend and his new girlfriend,” was not “stable and appropriate housing.” The trial court also found that Mother had failed to complete parenting classes, was not acting consistently with Amy’s health and welfare, and was not a fit parent. At the conclusion of the hearing, the trial court ordered Amy to remain in DSS custody and implemented a primary permanent plan of adoption, with a secondary permanent plan of guardianship.

From March 2021 to October 2021, DSS unsuccessfully attempted to locate Mother. During this time, Mother did not contact DSS to inquire about Amy and did not participate in video visitations with her child. DSS filed a petition to terminate Mother’s parental rights on 28 June 2021.

On 28 October 2021, Mother contacted DSS and reported that she and her boyfriend were asked to leave the friend's house shortly after the March 2021 hearing and were residing at a hotel. Mother advised DSS she obtained full-time employment at Walmart, and DSS provided her with a list of phone numbers and addresses of services in Arkansas to complete her case plan. A virtual visitation occurred on 4 November 2021.

Mother, by and through counsel, filed a response to the petition to terminate parental rights on 16 November 2021. The matter was originally scheduled to be heard on 27 October 2021 but was continued with the consent of all parties until 17 November 2021. The matter was again continued at the request of Mother's trial counsel until 8 December 2021. At the 8 December 2021 Webex hearing, the matter was rescheduled "to allow [Mother] to arrange to attend via WebEx through secure wifi, as she was in the breakroom at Walmart and the reception was not strong." Mother and DSS exchanged emails on 18 and 19 December 2021, but Mother did not contact DSS thereafter.

The termination of parental rights hearing was held on 26 January 2022. In preparation for this hearing, DSS arranged for Mother to go to the Sebastian County Department of Human Services to participate in the hearing via Webex; however, she did not appear at the hearing. Ms. Wilson, Amy's DSS case worker, testified that paternity has never been established for Amy. Ms. Wilson also testified that Mother had not completed parenting classes and continued to lack stable and appropriate

housing throughout the life of this case. Additionally, Ms. Wilson testified that, between May 2020 and March 2021, Mother had at least two jobs and has been employed full-time by Walmart as of at least December 2021. Ms. Wilson testified that Mother has not maintained regular contact with DSS and, since Ms. Wilson received this case in November 2020, she estimated that Mother had engaged in five visitations with Amy.

At the conclusion of the hearing, the trial court found by clear, cogent, and convincing evidence that grounds existed to terminate Mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6) and found that grounds existed to terminate the parental rights of Amy's unknown father pursuant to N.C. Gen. Stat. § 7B-1111(a)(5). The trial court further found that terminating Mother and Father's parental rights would be in Amy's best interests. The termination of parental rights order was entered on 9 March 2022 and served upon the parties on 11 March 2022. Mother filed timely notice of appeal on 25 March 2022.

## **II. Analysis**

Termination of parental rights proceedings are a two-step process: an adjudication stage and a disposition stage. N.C. Gen. Stat. §§ 7B-1109, 7B-1110; *In re A.U.D.*, 373 N.C. 3, 5, 832 S.E.2d 698, 700 (2019). During the adjudication stage, the petitioner must prove by "clear, cogent, and convincing evidence" one or more grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a). N.C. Gen. Stat. § 7B-1109(e)-(f); *In re A.U.D.*, 373 N.C. at 5, 832 S.E.2d at 700.

This Court reviews an adjudication order to determine “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 A.B.C.*, 374 N.C. 752, 760, 844 S.E.2d 902, 908 (2020) (citation omitted). “[A]ppellate courts are bound by the trial courts’ findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.” *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (internal citations omitted). Unchallenged findings are deemed binding on appeal. *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020) (citation omitted). “On appeal, this Court may not reweigh the evidence or assess credibility.” *In re K.G.W.*, 250 N.C. App. 62, 67, 791 S.E.2d 540, 543 (2016) (quoting *Kelly v. Duke Univ.*, 190 N.C. App. 733, 738-39, 661 S.E.2d 745, 748 (2008)).

This court reviews only those challenged “findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citation omitted). A finding of only one ground under N.C. Gen. Stat. § 7B-1111(a) “is necessary to support a termination of parental rights.” *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019). The court’s conclusions of law are subject to *de novo* review on appeal. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation omitted).



**A. Termination of Parental Rights based upon Willful Failure to Make Reasonable Progress.**

The trial court terminated Mother's parental rights based upon the ground that she willfully left Amy "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 her daughter pursuant to Section 7B-1111(a)(2).

A finding that a parent acted willfully for purposes of section 7B-1111(a)(2) does not require a showing of fault by the parent. "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." *In re B.J.H.*, 378 N.C. 524, 530, 862 S.E.2d 784, 791 (2021) (citation omitted). "A finding of willfulness is not precluded even if the [parent] has made some efforts to regain custody of the children." *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995) (citation omitted). In order for a parent to "avoid the termination of his or her parental rights under § 7B-1111(a)(2)" the parent is required to "make reasonable progress under the circumstances towards correcting those conditions that led to the child being placed in [DSS] custody, irrespective of whoever's fault it was that the child was placed in [DSS] custody in the first place." *In re A.W.*, 237 N.C. App. 209, 217, 765 S.E.2d 111, 115-16 (2014) (internal quotation omitted).

A parent's progress "is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights." *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006). Our Supreme Court has held "parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)" provided "a particular case plan provision addresses an issue that, directly or indirectly, contributed to causing the juvenile's removal from the parental home, the extent to which a parent has reasonably complied with that case plan provision is, at minimum, relevant to the determination of whether that parent's parental rights" are subject to termination for failure to make reasonable progress. *In re B.O.A.*, 372 N.C. 372, 384-85, 831 S.E.2d 305, 313-14 (2019). Thus, we consider Mother's progress in correcting the conditions that resulted in Amy's placement with DSS. *In re A.W.*, 237 N.C. App. at 217, 765 S.E.2d at 115-16.

**B. The Trial Court Erred in Reciting Allegations from the Petition for Termination of Parental Rights as a Large Number of Its Findings of Fact.**

On appeal, Mother first argues that the trial court's 9 March 2022 termination order recited findings which were "simply recycled sentences and paragraphs from the termination petition" filed 28 June 2021. As such, Mother contests a number of findings of fact in the termination order, including findings 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, and 19. According to Mother, "[i]f these findings have any basis, they appear to be largely based upon court reports submitted in the underlying action, not

sworn testimony at the termination action. The trial court committed reversible error in entering a large amount of improper findings of fact as to grounds for termination.” We disagree.

“When a trial court is required to make findings of fact, it must make the findings of fact specially.” *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (internal quotations marks omitted). As a result, “the trial court, must, through ‘processes of logical reasoning,’ based on the evidentiary facts before it, ‘find the ultimate facts essential to support the conclusions of law.’” *In re O.W.*, 164 N.C. App. 699, 702, 596 S.E.2d 851, 853 (2004) (quoting *In re Harton*, 156 N.C. App. at 660, 277 S.E.2d at 337). We have previously determined that “it is not *per se* reversible error for a trial court’s fact findings to mirror the wording of a petition or other pleading prepared by a party.” *In re L.Z.A.*, 249 N.C. App. 628, 634, 792 S.E.2d 160, 166 (2016). As long as “the record of the proceedings demonstrates that the trial court, through processes of logical reasoning, based on evidentiary facts before it, found the ultimate facts necessary to dispose of the case,” it is “irrelevant whether those findings appear cut-and-pasted from a party’s earlier pleading or submission.” *In re J.W.*, 241 N.C. App. 44, 45-46, 772 S.E.2d 249, 251 (2015).

During the termination hearing, the trial court accepted into evidence several court documents from this case as exhibits, including the adjudication and disposition orders from 11 March 2020, the permanency planning review order from 20 May 2020, the permanency planning review order from 10 March 2021, and Mother’s

permanency planning family services agreement. Thus, the contested findings of fact are recitations of evidence based upon evidence entered into the court record and are therefore admissible. Further, the findings Mother challenges here relate to the history and background of this case, and do not constitute a challenge to the ultimate findings of fact, as those findings are found elsewhere in the order.

**C. The Trial Court Erred in Terminating Mother's Parental Rights Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).**

Next, Mother challenges the trial court's termination of her parental rights based upon willful failure to make reasonable progress to correct the conditions that led to her daughter's removal from the home. N.C. Gen. Stat. § 7B-1111(a)(2) (2022). Mother argues that she did make reasonable, although not perfect, progress in "correcting the conditions that [led] to [Amy's] removal, conditions which clearly were strongly related to poverty." Mother argues that she successfully "obtained the psychological evaluation, she obtained housing, she obtained employment, and she completed 50% of the parenting classes, by the time of the termination hearing." She contends that:

instability of housing or employment cannot be used to establish a willful leaving in foster care and lack of reasonable progress in correcting removal conditions sufficient to justify termination of parental rights without an analysis of the trial court as to how these circumstances were willful and not attributable simply to poverty, upon which N.C. Gen. Stat. § 7B-1111(a)(2) expressly prohibits termination.

In challenging her termination of parental rights based upon willful failure to make

reasonable progress, Mother argues that “[f]inding of fact 30 is erroneous as it fails to recognize the progress [she] made in rectifying the removal conditions regarding Amy.” We disagree.

Finding of fact 30 states:

The Court finds that the mother has had the ability to make reasonable progress to correct the conditions which led to the child’s continued placement in foster care but did not do so. The Court, in contemplation of any change of conditions or circumstances, finds that due to the mother’s failure to successfully resolve the protective issues which led to the juvenile’s placement in foster care, there has been no change of circumstances for the better.

Mother correctly contends that under N.C. Gen. Stat. § 7B-1111, “[n]o parental rights . . . shall be terminated for the *sole* reason that the parents are unable to care for the juvenile on account of their poverty.” § 7B-1111(a)(2) (emphasis added). However, the trial court did not factor Mother’s poverty into its decision to terminate her parental rights, and neither do we. The record evidence provides a sufficient basis for grounds to terminate Mother’s parental rights based upon her willful failure to make reasonable progress with matters unrelated to poverty. The record evidence tended to show that, at Amy’s birth, DSS offered to assist Mother with finding appropriate housing for herself and Amy, so that they could remain together. Mother declined this housing assistance in order to stay with her boyfriend, who lived in a tent at the time of Amy’s birth. After Amy was removed from Mother’s care, DSS continued to offer referrals and assistance to help Mother find appropriate housing.

DSS placed her on a housing list and referred her to local women's shelters, so that she and Amy could reside together and have access to additional services related to her case plan. Mother declined these offers to help her reach housing stability, choosing instead to continue living with her boyfriend.

The record evidence shows that, in January 2021, Mother made the decision to move to Arkansas with her boyfriend in order to stay with a friend but was asked to leave that residence sometime after March 2021. From March 2021 to October 2021, Mother did not make her address known to DSS, nor did she communicate with DSS during that time. By the time Mother communicated with her social worker in October 2021, Mother had moved into a hotel and gained full-time employment at Walmart. However, the record indicates that after moving to Arkansas, mother chose not to resume participation in any services or resources to address the reasons for Amy's placement into DSS custody.

Although Mother successfully completed a psychological evaluation, the trial court found that she had not successfully completed the recommended parenting classes at the time of the termination hearing. Prior to leaving North Carolina, Mother had completed half of her parenting classes and had the option to complete the program virtually. However, Mother was discharged from the parenting course as a result of noncompliance and for failing to attend the offered virtual classes. Mother could have completed the course requirements of the recommended parenting classes virtually after moving to Arkansas but failed to do so.

Competent evidence also supports the trial court's findings that, at the time of the termination hearing, Mother had been employed full-time since October 2021 with Walmart. Based upon the record evidence, Mother's deficiencies in her progress were not solely based upon poverty. Indeed, Mother's "failure to obtain custody of [Amy] appears primarily to have been the result of [her] own inaction, and thus poverty could not have been the 'sole reason' for terminating [Mother's] parental rights." *In re A.W.*, 237 N.C. App. 209, 217-18, 765 S.E.2d 111, 116 (2014).

In light of these findings, the trial court did not hold Mother's financial circumstances against her when determining whether reasonable progress had been made toward correcting the conditions which led to Amy's removal from Mother's custody. Although she had gained full-time employment by the time of the termination hearing, Mother did not make reasonable progress to correct the conditions that led to Amy's removal. Mother's failure to participate in DSS services, including failure to engage or attend visitations, failure to attend parenting classes, and refusal to utilize DSS resources, thwarted reunification efforts and, ultimately, kept Mother and Amy apart.

Consequently, we hold that the trial court's findings were based on competent evidence and are sufficient to support the trial court's conclusion that grounds existed to terminate Mother's parental rights; specifically, Mother willfully left Amy 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 child pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). “Because a finding of only one ground is necessary to support a termination of parental rights,” we need not address Mother’s arguments regarding the trial court’s findings on the grounds of neglect nor the incapability of Mother to properly care for her child. *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019). Furthermore, because Mother does not contest the trial court’s dispositional findings of the child’s best interests, we do not address the disposition in the termination order.

### **III. Conclusion**

For the above reasons, we affirm the trial court’s order terminating Mother’s parental rights to her minor child.

AFFIRMED.

Judges DILLON and FLOOD concur.

Report per Rule 30(e).