

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-891

Filed 18 July 2023

Watauga County, No. 20 JT 41

In the Matter of:

A.G.L.

Appeal by Respondent-Mother from order entered 18 July 2022 by Judge Rebecca Eggers-Gryder in Watauga County District Court. Heard in the Court of Appeals 22 May 2023.

Peter Wood for the Respondent-Appellant Mother.

Matthew Wunsche, Guardian ad Litem.

Chelsea Bell Garrett for the Petitioner-Appellee Watauga County Department of Social Services.

STADING, Judge.

Respondent-Mother (“Mother”) appeals from the trial court’s order terminating her parental rights to her minor child pursuant to N.C. Gen. Stat. § 7B-1111 (2022). For the reasons below, we affirm.

I. Background

“Lacy”¹ was born in July of 2011 to Mother, Jennifer Lewis, and her father², Anthony Lewis. On 3 September 2020, Watauga County Department of Social Services (“DSS”) received a report that the family was homeless, Lacy was not attending virtual school, there was ongoing domestic violence within the family, and both parents had substance abuse issues. The report also alleged that the parents “were trading [Lacy], using her to have sex with adults in exchange for drugs.” The report further provided that, on 10 September 2020, the parents were involved in a severe incident of domestic violence that led to Mother’s hospitalization and a domestic violence protective order being entered against Anthony Lewis.

On 22 September 2020, DSS filed a petition alleging that Lacy was a neglected juvenile due to “domestic violence, substance abuse, and homelessness.” DSS subsequently removed Lacy from her parents. In November 2020, DSS entered into a case plan with Mother that required her to address substance abuse issues, complete parenting classes, acquire housing, and obtain employment. On 11 February 2020, the trial court adjudicated Lacy as neglected and implemented a primary plan for reunification.

After Mother contested the first two potential placements, DSS located an appropriate foster home for Lacy on 17 March 2021. On 24 March 2021, the trial

¹ Lacy is a pseudonym to protect the identity of the minor child. See N.C. R. App. P. 42.

² Anthony Lewis relinquished his parental rights to Lacy on 26 April 2021.

court entered a permanency review order. The trial court found that, since the last hearing, Mother had not yet made reasonable progress on her case plan and “[d]ue to the lack of progress, [the trial court] is concerned that there is not a likelihood that [Lacy] can be reunified with [Mother] within the next six (6) months.” The trial court stated that “[t]he permanent plan shall be Reunification,” but noted that it “will change the plan at the next Juvenile Session of Court if [Mother does] not make real progress before then.”

On 23 July 2021, the trial court found that Mother had “a traumatic brain injury and may have issues fully understanding the status and import of the hearings/ case.” To address these concerns, the court appointed a Rule 17 guardian *ad litem* with decision-making authority. The trial court also ordered that “DSS arrange and pay for [Mother] to be evaluated by a psychologist and that DSS shall pick her up and take her to the appointment.”

A permanency planning hearing was held on 4 February 2022 and the trial court entered an order pursuant thereto on 2 March 2022. In its order, the trial court found that Mother failed to comply with her case plan. The trial court noted that Mother refused to take any drug screens, failed to obtain a substance abuse assessment or a neuropsychological evaluation, and only attended fifty percent of the scheduled supervised visits. Furthermore, the trial court found that Mother “stated several times during her testimony at this hearing that she has no reason to stop doing drugs until she sees her daughter/ gets her daughter back.” The trial court

changed Lacy's permanent plan to adoption while keeping a concurrent reunification plan. The trial court concluded by stating that it is "keeping the secondary plan simply because the [Mother] needs assistance from DSS" and that "DSS has made monumental efforts toward Reunification."

On 1 April 2022, DSS moved to terminate Mother's parental rights in Lacy. The trial court held a hearing on 2 May 2022, during which the court received evidence from the primary social worker involved in the case. The social worker explained that Mother had not yet completed essential components of her case plan, including engaging in intensive outpatient services, attending parenting classes, and completing a neuropsychological assessment. She also indicated that Mother had missed multiple scheduled counseling appointments. To account for any impact of her traumatic brain injury and difficulties with transportation, the social worker discussed special steps that DSS agents took to assist Mother in properly completing her case plan. However, even with DSS's assistance, the social worker noted that Mother made very little progress, only sporadically submitting to drug testing and only completing an intake assessment for substance abuse treatment. Mother also provided testimony at the hearing, in which she confirmed the social worker's testimony.

On 15 July 2022, the trial court entered an order terminating Mother's parental rights in Lacy. The trial court adjudicated Lacy as neglected and dependent,

and found that Mother had willfully left Lacy in foster care for twenty-two months.

Specifically, the court found:

8. Pursuant to N.C. Gen. Stat. § 7B-1111, based on the facts and circumstances set forth above, after DSS took custody of the Juvenile, [Mother] has Neglected the Juvenile within the meaning of N.C. Gen. Stat. § 7B-101(a)(1) and there is a probability of repetition of neglect if the Juvenile were to be placed in her custody.

9. Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), based on the facts and circumstances set forth above, [Mother] 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.

10. Pursuant to N.C. Gen. Stat. § 7B-1111(a)(6), based on the facts and circumstances set forth above, the Juvenile is still a Dependent Juvenile within the meaning of N.C. Gen. Stat. § 7B-111(a)(6) [sic], no appropriate alternative childcare arrangement has been suggested by [Mother], and there is a reasonable probability that her incapability will continue for the foreseeable future.

The trial court concluded that it was in Lacy's best interest to terminate Mother's parental rights. Mother entered a notice of appeal on 21 July 2022.

II. Jurisdiction

This Court has jurisdiction over Mother's appeal from the order terminating her parental rights pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

III. Analysis

On appeal, Mother argues, *inter alia*, that there was not clear, cogent, and convincing evidence to support the trial court’s grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(2). First, Mother contests finding of fact no. 9 that, under N.C. Gen. Stat. § 7B-1111(a)(2), “[Mother] willfully left [Lacy] 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 [Lacy].” Next, Mother disputes conclusion of law no. 2, which states that “[g]rounds exist pursuant to . . . § 7B-101(a)(2) . . . to terminate [Mother’s] parental rights.” Then, Mother argues that she did not willfully fail to make reasonable progress in her case plan or willfully leave Lacy in foster care because she lacked the ability to complete the case plan due to her traumatic brain injury.

Our Juvenile Code provides for a two-step process for the termination of parental rights. N.C. Gen. Stat. §§ 7B-1109, -1110 (2022). At the adjudication stage, the petitioner must prove by clear, cogent, and convincing evidence that one or more grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a). *In re A.J.P.*, 375 N.C. 516, 524–25, 849 S.E.2d 839, 847 (2020) (quotation marks omitted) (citing N.C. Gen. Stat. § 7B-1109 (f)). “We review a trial court’s adjudication under N.C.G.S. § 7B-1109 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. The trial court’s

conclusions of law are reviewable de novo on appeal.” *Id.* at 525, 849 S.E.2d at 848 (internal quotation marks and internal citations omitted). “If the trial court adjudicates one or more grounds for termination, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.” *Id.* (citations omitted). In the case of termination under N.C.G.S. § 7B-1111(a)(2), the trial court performs “a two-step analysis where it must determine by clear, cogent and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.” *Id.* (citation omitted).

A. Findings of Fact and Conclusions of Law

“[A]ny determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law,” while a determination reached through “logical reasoning from the evidentiary facts” should be classified as a finding of fact. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted). A trial court’s classification of its determination as a finding or conclusion does not govern our analysis. *In re J.T.C.*, 273 N.C. App. 66, 73, 847 S.E.2d 452, 458 (2020) (citation omitted). Thus, conclusion of law no. 2 is suitably listed as a conclusion of law, but it references the incorrect statute as a ground for termination. However, finding of fact no. 9 is more appropriately classified as a conclusion of law

which properly cites the correct ground for termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(2).

B. Findings of Fact

While Mother contests finding of fact no. 9 (as a finding of fact), this subsection of the trial court’s order is properly analyzed as a conclusion of law. In the trial court’s order, the bulk of the trial court’s findings of fact were contained in unchallenged finding of fact no. 7. Unchallenged findings of fact will be “deemed supported by competent evidence and are binding on appeal.” *In re Z.G.J.*, 378 N.C. 500, 508–09, 862 S.E.2d 180, 187 (2021) (citing *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019)). In relevant part, finding of fact no. 7 stated:

a. The Juvenile has been in custody since September 21, 2020 and was adjudicated neglected in December 2020. The Juvenile came into DSS care after DSS received reports that the Respondent Parents were trading the Juvenile to adults for sex in exchange for drugs, were living in a tent, committing acts of domestic violence in her presence, and the Juvenile had not signed into virtual school that year. . . .

. . . .

d. Near the end of 2020, [Mother] signed a case plan requiring that she (i) complete an intake assessment (clinical comprehensive assessment “CCA”) at Daymark and follow all recommendations therefrom; (ii) complete parenting classes; (iii) submit to neuropsychological evaluation; (iv) submit to regular weekly drug screens . . . and (vii) obtain and maintain appropriate housing.

e. Since entering her case plan, [Mother] has only very sporadically submitted to drug screens—taking only

approximately five (5) screens since entering into the case plan. . . .

f. The assessment required by [Mother's] case plan signed in late 2020 was not completed until early 2022—over approximately 13 months into the case. She missed multiple scheduled appointments with Daymark to get the intake assessment done prior to January 2022. . . .

g. As a result of her CCA, Daymark recommended SAIOP for her substance abuse, but she did not participate or make progress, so DSS then made arrangements for [Mother] to do in-patient treatment. But, she also did not engage in/go through with the in-patient therapy. The Court does not find [Mother] credible when she claims she engaged as there is no evidence she ever began the group SAIOP therapy.

h. In September 2021, DSS went to pick up [Mother] to take her to her neuropsychological evaluation and she was not at the agreed pickup location and could not be reached by phone. A subsequent virtual intake appointment for psychological testing was made for late September; she also missed that appointment and the evaluation was again rescheduled. On or about January 11 2022, [Mother] finally completed her intake appointment for neurological evaluation, but this was over 13 months into the case plan. Social Worker Fender has reminded her of her appointments, emailed her and watched her write down notes about upcoming appointments but [Mother] has shown little to no improvement in being able to independently manage her schedule attend scheduled appointments or even call in advance to cancel them if she will not be able to attend.

. . . .

j. [Mother] has told DSS and this Court several times—including in the last hearing before this Court—that she has no intention to stop using substances unless and until she gets her daughter back or has a visit with her.

k. On February 10, 2022, [Mother] completed a urine drug screen and tested positive for THC, Benzodiazepines, Buprenorphine, and Amphetamines.

. . . .

n. [Mother] has a traumatic brain injury (TBI) (which precipitated appointment of the Rule 17 GAL named above). However, DSS was made aware of the TBI early in the case and made accommodations for, and engaged in special efforts to assist, [Mother] with the completion of her case plan. By [Mother's] own admissions, her TBI causes her to have memory issues; therefore, DSS put communications in writing (email mostly), provided multiple hard copies of her case plan to her over the life of the case and reviewed it with her in person several times. In addition, DSS would watch [Mother] write down important appointments to make sure she did make a note of them and called her at times to remind her of appointments scheduled for the following day. DSS has also offered to transport [Mother] to appointments and to visitation. In this hearing, the Court received a copy of emails from DSS Social Worker Fender to [Mother] memorializing some of these communications.

. . .

p. [Mother] had a meeting in December 2021 with her attorney and DSS at which meeting DSS again emphasized the need to work on her Case Plan. As of the date of this hearing, [Mother] has not made reasonable progress in her case plan.

q. [Mother] has limitations due to her traumatic brain injury; but, despite the provision of services, continues special efforts by DSS to assist [Mother], and even warnings from the Court and repeated changes given to [Mother] over the past approximately 18 months, [Mother's] incapability cannot be overcome.

C. Conclusions of Law

We analyze the trial court's conclusion of law, labeled as finding of fact no. 2, under a *de novo* standard of review to determine whether it is adequately supported by the above findings of fact. *See In re A.J.P.*, 375 N.C. at 525, 849 S.E.2d at 848. Under N.C. Gen. Stat. § 7B-1111(a)(2), the court may terminate a party's parental rights upon finding that: (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) as of the time of the hearing, the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child." *In re L.C.R.*, 226 N.C. App. 249, 250–51, 739 S.E.2d 596, 597–98 (2013) (citation omitted). Mother proffers that the disputed conclusion of law is flawed in that she did not willfully leave Lacy in foster care for over twelve months and did not willfully fail to make reasonable progress to correct those conditions which led to the removal of Lacy.

Mother challenges the trial court's determination that she willfully left Lacy in foster care by asserting that she lacked the ability to complete the case plan due to her traumatic brain injury. In doing so, she cites cases in which our Court found reversible error in a trial court's failure to appoint a guardian *ad litem* when there was evidence of circumstances that raised a substantial question as to whether the parent was incompetent or had diminished capacity. *See In re R.D.*, No. COA12-1400, 2013 WL 1616102, at *11 (N.C. Ct. App. Apr. 16, 2013) (finding that "[t]he court was required to resolve those questions [about respondent mother's mental state] by

conducting a hearing to determine whether a guardian ad litem should be appointed for respondent mother”); *see also In re M.I.M.*, No. COA10-539, 2010 WL 4290874, at *3 (N.C. Ct. App. Nov. 2, 2010) (holding that “[since] the allegations in the juvenile petition raise a substantial question as to respondent’s competency. . . the trial court abused its discretion by not appointing a guardian ad litem for respondent. . . .”). However, these cases are inapplicable since the trial court judge here acted exactly as those cases require—Mother was appointed a guardian *ad litem*. Moreover, finding of fact no. 7(n) illustrates the efforts of DSS to accommodate Mother’s “memory issues” to ensure that she had the necessary resources and support to adequately complete her case plan—providing multiple copies of the case plan, reviewing the case plan with her in person several times, using written communication, watching to make sure she wrote down appointments, calling to remind her of appointments, and offering to transport Mother to appointments and visitations. The trial court’s order details how DSS implemented this case plan specifically with Mother’s brain injury in mind. By doing so, DSS provided Mother with every available tool to complete her case plan.

“*Willfulness* when terminating parental rights on the grounds of N.C. Gen. Stat. § 7B-1111(a)(2), is something less than *willful* abandonment when terminating on the ground of N.C. Gen. Stat. § 7B-1111(a)(7).” *In re Shepard*, 162 N.C. App. 215, 224, 591 S.E.2d 1, 7 (2004) (emphasis added) (internal quotation marks and citation omitted). “A finding of willfulness is not precluded even if respondent has made some

efforts to regain custody of the children.” *Id.* (citation omitted). Willfulness may be found where the parent, recognizing her inability to care for the children, voluntarily leaves the children in foster care. *Id.* at 225, 591 S.E.2d at 8 (citation omitted). “Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort.” *In re McMillon*, 143 N.C. App. 402, 410, 546 S.E.2d 169, 175 (2001) (citations omitted). The nature and extent of the parent’s reasonable 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) (citation omitted). And, in evaluating a parent’s reasonable progress, “parental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist[.]” *In re B.O.A.*, 372 N.C. 372, 384, 831 S.E.2d 305, 313 (2019).

This Court has previously had occasion to review whether a trial court had sufficient evidence to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) upon finding “the [respondent-]mother’s behavior was willful” and “her progress was not reasonable.” *In re A.A.S.*, 258 N.C. App. 422, 430, 812 S.E.2d 875, 882 (2018). There, the record contained testimony from social workers establishing that DSS provided bus passes to the respondent-mother, organized and supervised visits, and arranged for drug screenings. *Id.* The trial court’s order contained findings of fact that the respondent-mother had “short lived” progress with a portion of the case plan and failed to comply with other portions. *Id.* at 431, 812 S.E.2d at 882. On appeal,

this Court held that “despite [the respondent-mother’s] sporadic efforts, there was clear, cogent, and convincing evidence to support the trial court’s findings that [she] willfully left [her children] in foster care for more than twelve months and had failed to make reasonable progress under N.C.G.S. § 7B-1111(a)(2).” *Id.* at 431, 812 S.E.2d at 882–83.

The matter before us is quite similar in that Mother’s reluctant and partial compliance with some parts of the case plan but not others shows that she had the ability to complete her case plan and chose not to. *See In re McMillon*, 143 N.C. App. at 410, 546 S.E.2d at 175 (citations omitted). In finding of fact no. 7, the trial court found that “[Mother] has only very sporadically submitted to drug screens,” did not obtain a substance abuse assessment for nearly thirteen months, failed to follow the assessment’s recommendations, and even more concerning—she told DSS and the trial court “that she has no intention to stop using substances unless and until she gets her daughter back or has a visit with her.” These findings detail the continued and intentional ways in which Mother eschewed her responsibilities and failed to complete her case plan adequately. Her actions establish that she willfully left Lacy in foster care and failed to comply with the case plan and make reasonable progress in correcting the conditions, specifically any issues with substance abuse, that led to Lacy’s removal. Based on the foregoing, a *de novo* review shows there is clear, cogent, and convincing evidence to support the trial court’s grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(2).

IV. Conclusion

Mother makes additional arguments in dispute of findings of fact and the resulting conclusions of law that grounds existed to terminate her parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(1) and (a)(6). “[A]n adjudication of any single ground in N.C.G.S. § 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) (citations omitted). Accordingly, it is unnecessary to address Mother’s arguments concerning the other grounds for termination found by the court. *In re L.C.R.*, 226 N.C. App. at 252, 739 S.E.2d at 598 (citation omitted). The trial court’s order is affirmed.

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e)