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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-233

Filed 21 November 2023

Wake County, Nos. 20JT123-25

IN THE MATTER OF: S.D., R.D., I.D.

Appeals by Respondent-Mother and Respondent-Father from Order entered 30 November 2022 by Judge V.A. Davidian, III in Wake County District Court. Heard in the Court of Appeals 4 October 2023.

Wake County Attorney's Office, by Mary Boyce Wells, for Petitioner-Appellee Wake County Health and Human Services.

WINSTON & STRAWN LLP, by Stacie C. Knight, for Guardian ad litem.

Anne C. Wright for Respondent-Mother.

J. Thomas Diepenbrock for Respondent-Father.

HAMPSON, Judge.

Factual and Procedural Background

Both Respondent-Mother and Respondent-Father (collectively, Respondent-Parents) appeal from an Order terminating their parental rights to their minor

children. The Record before us tends to reflect the following:

Respondent-Parents have three children together—Isaiah, Rebecca, and Sienna.¹ On 4 September 2020, Wake County Health and Human Services (WCHHS) filed Petitions alleging the three children to be neglected and dependent juveniles. Isaiah was also alleged to be abused. WCHHS was granted nonsecure custody of the children the same day. Following a hearing on 27 January 2021, the trial court entered an Order on 12 February 2021 adjudicating the three children as neglected. Isaiah and Rebecca were also adjudicated as abused. Respondent-Parents were both ordered to comply with Out of Home Family Service Agreements. Respondent-Mother was ordered to:

participate in the following services to correct the conditions that prevented the children from returning to her care:

Follow recommendations from an updated substance abuse assessment.

Follow all recommendations from her psychological evaluation.

Complete a county approved parenting education program and demonstrate behaviors learned during visitation. This may include participating in the children's counseling[.]

Obtain and maintain suitable housing sufficient for her family, providing a copy of a lease or rental agreement[.]

Maintain income sufficient to meet the needs of herself and her children and provide proof of copies of paystubs or other documentation of income to [WCHHS] on at least a monthly

¹ Pseudonyms used by the parties.

basis.

Visit in compliance with the visitation agreement[.]

On 6 January 2022, Respondent-Father's attorney filed a Motion for appointment of a Guardian ad litem, claiming Respondent-Father "suffered a stroke in 2020 which has affected his mental health and cognition." Following a hearing in which Respondent-Father was present, the trial court denied the Motion, stating it did not find a reasonable basis to believe Respondent-Father was incompetent or had diminished capacity and could not adequately act in his own best interest.

On 25 March 2022, WCHHS filed a Motion seeking termination of both Respondent-Mother and Respondent-Father's parental rights to the children. The trial court entered an Order on 30 November 2022 terminating both Respondent-Mother and Respondent-Father's parental rights to the children. Relevant to Respondent-Mother, the trial court made the following Findings:

16. WCHHS referred [Respondent-Mother] to "New Beginnings Healthcare", a program for women that are having housing instability and domestic violence issue. Claudia Elliot is the director of the program and when she began working with [Respondent-Mother] in the fall of 2021, [Respondent-Mother] did not have housing or employment.

17. Ms. Elliott explained the rules of the program to [Respondent-Mother]. No men were permitted at the housing being provided for the women and drugs and alcohol were also not allowed. The program provided housing at no cost and paid \$10 an hour.

18. [Respondent-Mother] broke all the rules of the program. She had men in the home When Ms. Elliott went to investigate one of the reports, a man was leaving and [Respondent-Mother]

was found hiding in a closet moments later. [Respondent-Mother] also had marijuana and alcohol in the home. These rule violations led to her discharge from the program in December 2021.

19. After [Respondent-Mother] was discharged, she alleged she had not been paid and this was investigated. The money was paid to [Respondent-Mother] and [Respondent-Mother]’s allegations were dismissed. [Respondent-Mother] is not credible.

. . . .

21. [Respondent-Mother] reports that she had applied for housing and hopes to have housing soon. Given her history, this is not credible. In 2022, she received a tax refund of between \$7,000.00 and \$8,000.00 but, despite having this money, she was unable to rent housing other than the room she stays in with [her boyfriend]. [Respondent-Mother] reports, but the [c]ourt does not find as fact, that she has an eviction on her record and that is preventing her from being able to rent a home. [Respondent-Mother] was unable to say when this would no longer be a barrier to her renting a home. She reports that as of the date of this hearing she has approximately \$5,000.00 left from the tax return funds.

22. As of September 21, 2022, [Respondent-Mother] was still staying . . . in a room with [her boyfriend] in a home owned by his parents. This home/room is not a suitable place to reunify or visit with the children.

. . . .

24. [Respondent-Mother] was ordered to obtain and maintain financial resources sufficient to meet the needs of herself and her children and to provide documentation of such to WCHHS monthly.

25. At the hearing on April 21, 2021, [Respondent-Mother] provided inconsistent reports about her employment and had not provided any verification of income, but she reported her job was “off the books”[.]

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26. At the hearing on August 16, 2021, [Respondent-Mother] was working at a Tapas bar and had provided a few paystubs showing forty hours of work a week. Her schedule was from around 11 a.m. until late at night or early the next morning.

27. At the hearing on January 20, 2022, [Respondent-Mother] was working 20-30 hours a week as a Personal Care Assistant.

....

29. At the inception of the case, [Respondent-Mother] was charged with identity fraud and incarcerated. She eventually resolved those matters.

....

31. On August 5, 2022, [Respondent-Mother] was a passenger in her boyfriend's car[] and was charged with possession of marijuana, having an open container of alcohol in a car and possession of drug paraphernalia. Those charges remain pending. Her fiancé was the driver and he was stopped for speeding and was also charged with these offenses. [Respondent-Mother]'s issues substance abuse [sic] and her willingness to engage in activities with or surrounded by drugs has not changed.

....

33. [Respondent-Mother] had a substance abuse assessment with licensed assessor Ken White on July 6, 2020. She denied substance abuse. [Respondent-Mother] did not disclose she had been charged with possession of drug paraphernalia. As a result, Mr. White recommended she submit to random drug screens and a hair strand test if necessary.

....

35. At the hearing on January 20, 2022, [Respondent-Mother] had been referred to five drug screens since the last hearing and she missed four of the screens. She tested positive for marijuana December 21, 2021, and [Respondent-Mother] attributed that positive test to "gummies" she takes with THC. There was an

odor of marijuana at a visit on December 19, 2021 and [Respondent-Mother] attributed that smell to cigarette smoke. [Respondent-Mother] is again not credible.

36. [Respondent-Mother] testified she last consumed “edibles” containing THC two and a half months prior to the hearing on termination of parental rights and this accounted for her positive drug screen. She took a hair strand test on May 3, 2022 and tested positive for marijuana and THC. She tested negative for impairing substances in July, August, and September of 2022. . . .

37. [Respondent-Mother] has not demonstrated sobriety consistently. Her drug use is consistent with the pattern of avoidance her therapist testified to at this hearing. . . . Her children, especially, have a trauma history and lingering resentments towards [Respondent-Mother] that call for [Respondent-Mother] to act in a much more responsible manner. . . .

. . . .

40. [Respondent-Mother] submitted to a psychological evaluation in a timely manner. Dr. Robert Aiello did the evaluation and diagnosed [Respondent-Mother] with Posttraumatic Stress Disorder with Dissociative Symptoms, Persistent Depressive Disorder (Dysthymia), With Anxious Distress and Panic Attacks, With Intermittent Major Depressive Episodes, With Current Episode. He noted that [Respondent-Mother]’s difficulties with depression are [c]hronic and persistent in quality and appear to have originated in the context of problems affecting her within her family of origin. She has a history of exposure to significant trauma (extending from her formative years and affect[ing] the quality of her adult relationships).

41. Dr. Aiello recommended:

[Respondent-Mother] initiate individual counseling services. A Trauma-Informed Cognitive Behavioral approach should work well with her. It will be important for [Respondent-Mother] to understand the connections between her thoughts, emotions, and behaviors. It will also be important for her to

learn strategies for managing triggers related to her history of trauma. After therapeutic rapport is established with [Respondent-Mother], it will be useful to support her in examining the quality of her adult relationship choices, in developing specific strategies for managing her impulses, and methods for considering options carefully before making choices. It will be very important for [Respondent-Mother] to not re-involve herself in a dependent or abusive relationship. [Respondent-Mother]’s individual clinician should be provided with a copy of this report.

42. [Respondent-Mother] engaged with Triangle Family Services therapist Miranda Lin February 2, 2021. She had an intake appointment on that date and was recommended to participate in outpatient therapy one to four times a month.

43. [Respondent-Mother] had an appointment that was rescheduled for February 11, 2021 and she missed that appointment. She went to appointments on February 16, 2021 and February 23, 2021. She missed her appointment March 2, 2021. She was late to her appointment on March 11, 2021 and the appointment was less than fifteen minutes.

44. [Respondent-Mother] attended appointments with Ms. Lin March 18, 2021, March 25, 2021, and April 1, 2021. She missed her appointment April 8, 2021. She attended her appointments April 9, 2021, April 15, 2021, April 22, 2021, April 29, 2021, and May 3, 2021.

....

51. [Respondent-Mother] was participating in Trauma Informed Cognitive Behavioral Therapy. She had identified goals of reducing negative impact of past trauma, developing the ability to process past trauma and developing techniques to not avoid and get overwhelmed, to stabilize and function at a higher level, improve family harmony and increase connectivity.

52. [Respondent-Mother]’s therapist noted on August 11, 2022 that, “in the last three to four months [Respondent-Mother] has made progress in being able to relax and has an improved

demeanor. [Respondent-Mother] has made slight to moderate progress in treatment with family harmony.”

53. [Respondent-Mother] has not achieved her therapeutic goals yet and still needs therapy to address these areas. It is not clear how long the therapy will take. [Respondent-Mother]’s failure to attend the hearing on September 21, 2022 also calls into question the progress in moving past avoidant behaviors.

54. [Respondent-Mother] participated in visits with the children at Wake House Visitation Center. She attended the majority of her visits but did miss visits on December 10, 2020, February 4, 2021, and April 11, 2021. She left the visits thirty minutes early on February 6, 2022, February 13, 2022, and February 20, 2022.

55. The visits usually went well but [Respondent-Mother] did need to be redirected at times for using profanity (not aimed towards the children), oversharing, using her phone excessively, and making promises to the children about their return to her care.

56. There was an instance in which [Isaiah] got upset and aggressive with [Respondent-Mother] on May 22, 2022. He accused [Respondent-Mother] of continuing to use drugs and that he did not want to return to her care. [Respondent-Mother] and visitation coach were unable to calm [Isaiah] down and he came at mom and slapped her in the face. [Isaiah] was still upset after the visit and tried to jump out of the car that was driving him back to the foster home. [Sienna] and [Rebecca] were present for this and were very upset. [Respondent-Mother] and [Isaiah] have been able to visit since that time and there have been no additional incidents like this.

Based, in relevant part, on these Findings, the trial court concluded grounds exist to terminate Respondent-Mother’s parental rights to the children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). The trial court also concluded grounds exist to terminate Respondent-Father’s parental rights to the children pursuant to N.C.

Gen. Stat. § 7B-1111(a)(1) and (2). The trial court further concluded it is in the best interests of the children that both Respondent-Mother and Respondent-Father's parental rights be terminated. Respondent-Mother timely filed written Notice of Appeal on 19 December 2022. Respondent-Father timely filed written Notice of Appeal on 22 December 2022.

Issues

The dispositive issues on appeal are whether: (I) the trial court erred in: (A) determining grounds exist to terminate Respondent-Mother's parental rights to the minor children pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); and (B) concluding it was in the best interests of the minor children to terminate Respondent-Mother's parental rights; and (II) the trial court erred in failing to appoint a Guardian ad litem for Respondent-Father.

Analysis

I. Respondent-Mother's Appeal

A. Grounds for Termination

First, Respondent-Mother asserts the trial court erred in adjudicating grounds exist to terminate Respondent-Mother's parental rights to the minor children pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2). We disagree.

Our Courts have consistently held, "a finding by the trial court that any one of the grounds for termination enumerated in N.C.G.S. § 7B-1111(a) exists is sufficient to support a termination order." *In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311

(2019) (citing *In re C.M.S.*, 184 N.C. App. 488, 491, 646 S.E.2d 592, 594 (2007)). Section 7B-1111(a)(2) authorizes the 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. Gen. Stat. § 7B-1111(a)(2) (2021).

To terminate rights on this ground, the court must determine two things: (1) whether the parent willfully left the child in foster care for more than twelve months, and if so, (2) whether the parent has not made reasonable progress in correcting the conditions that led to removal of the child from the home.

In re C.M.S., 184 N.C. App. at 494, 646 S.E.2d at 596 (citation omitted).

In the context of Section 7B-1111(a)(2), willfulness means something less than willful abandonment, which involves purpose and deliberation. *In re Nolen*, 117 N.C. App. 693, 699, 453 S.E.2d 220, 224 (1995). “Voluntarily leaving a child in foster care for more than twelve months or a failure to be responsive to the efforts of DSS are sufficient grounds to find willfulness.” *In re C.M.S.*, 184 N.C. App. at 494, 646 S.E.2d at 596 (citation omitted). “A finding of willfulness is not precluded even if the respondent has made some efforts to regain custody of the children.” *In re Nolen*, 117 N.C. App. at 699, 453 S.E.2d at 224 (citation omitted). “Similarly, a parent’s prolonged inability to improve his or her situation, despite some efforts and good intentions, will support a conclusion of lack of reasonable progress.” *In re C.M.S.*, 184 N.C. App. at 494, 646 S.E.2d at 596 (citation omitted).

In the case *sub judice*, the minor children were placed in foster care on 4 September 2020. At the time of the termination hearing in August and September 2022, the children had been in foster care for two years. To correct the conditions that prevented the children from returning to her care, Respondent-Mother was ordered to:

Follow recommendations from an updated substance abuse assessment.

Follow all recommendations from her psychological evaluation.

Complete a county approved parenting education program and demonstrate behaviors learned during visitation. This may include participating in the children's counseling[.]

Obtain and maintain suitable housing sufficient for her family, providing a copy of a lease or rental agreement[.]

Maintain income sufficient to meet the needs of herself and her children and provide proof of copies of paystubs or other documentation of income to [WCHHS] on at least a monthly basis.

Visit in compliance with the visitation agreement[.]

Respondent-Mother contends the trial court erred in concluding she failed to make reasonable progress on this case plan, citing this Court's prior statement "[P]erfection is not required to reach the 'reasonable' standard." *In re S.D.*, 243 N.C. App. 65, 73, 776 S.E.2d 862, 867 (2015). Indeed, "[a] parent's failure to fully satisfy all elements of the case plan goals is not equivalent of a lack of 'reasonable progress.'" *In re J.S.L.*, 177 N.C. App. 151, 163, 628 S.E.2d 387, 394 (2006) (citation omitted). However, the trial court's unchallenged Findings of Fact support the Conclusion

Respondent-Mother did not make reasonable progress to correct the conditions that led to the removal of the children from the care of Respondent-Mother. The extensive, unchallenged Findings made by the trial court demonstrate Respondent-Mother has not: established stable housing; addressed her substance abuse issues; achieved her therapeutic goals; nor maintained or obtained sufficient income to support herself or her children.² While we acknowledge Respondent-Mother did make some efforts to comply with the requirements of her case plan, “a parent’s prolonged inability to improve her situation, despite some efforts in that direction, will support an adjudication under N.C.G.S. § 7B-1111(a)(2).” *In re A.B.*, 253 N.C. App. 29, 33, 799 S.E.2d 445, 449 (2017) (alteration, citations, and quotation marks omitted).

Thus, we conclude the trial court’s unchallenged Findings of Fact support its adjudication of grounds for terminating Respondent-Mother’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(2). Therefore, we need not address Respondent-Mother’s challenge to termination pursuant to Section 7B-1111(a)(1). *See In re B.S.O.*, 234 N.C. App. 706, 708, 760 S.E.2d 59, 62 (2014).

B. Best Interests

Respondent-Mother next asserts the trial court abused its discretion by concluding it was in the children’s best interests to terminate Respondent-Mother’s

² We acknowledge Respondent-Mother challenges several of the trial court’s adjudicatory Findings, in whole or in part, on appeal, but given our resolution in this case, based on the unchallenged Findings, we do not address Respondent-Mother’s challenges to the adjudicatory Findings.

parental rights. We disagree.

“After an adjudication that one or more grounds for terminating a parent’s rights exist” under N.C. Gen. Stat. § 7B-1111(a), 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) (2021). This Court reviews a trial court’s determination as to the best interests of the child for an abuse of discretion. *In re A.C.*, 247 N.C. App. 528, 551, 786 S.E.2d 728, 744 (2016) (citation omitted). The trial court must consider the following factors in making its best interests determination and make written findings regarding any that are relevant:

- (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) (2021).

The trial court made the following Findings, reflecting its consideration of the factors listed in N.C. Gen. Stat. § 7B-1110(a):

76. [Respondent-Mother] also has a strong bond with the children but it is not a parent child bond. [Respondent-Mother] typically

interacts with the children as more like an aunt or a friend of the children. Her actions, since the children were removed from her care in September 2020, have contributed to the children not viewing [Respondent-Mother] as an authority figure. [Isaiah] in particular has issues with [Respondent-Mother] and resents her in part in the children being in foster care. The children all love their mother and wish it was possible for them to be with their mother but have accepted that [Respondent-Mother] will not do what she needs to do to have them placed with her.

77. The children are dealing with issues relating to the trauma they suffered in their parents' care but do not have any special needs that will prevent them from being adopted. [Isaiah] has gone back and forth about whether he will agree to be adopted. [Rebecca] and [Sienna] want to be adopted[.]

78. The children are all in pre-adoptive placements. [Sienna] and [Rebecca] have been placed in this home since they came into foster care and the placement is stable and continues to be in her best interests. Their foster parents have a strong positive bond with the children and they hope to be able to adopt [Sienna] and [Rebecca]. They are committed to maintaining sibling visits and visits with [Respondent-Mother] and paternal relatives.

79. [Isaiah] has been in his adoptive placement since January 2022 and his foster parents have a strong positive bond with him and hope to adopt him. They are committed to maintaining sibling visits and visits with [Respondent-Mother] and paternal relatives.

Respondent-Mother challenges Findings 76 and 77 in part. First, with regard Finding 76, Respondent-Mother contends there is insufficient evidence to support the finding the bond between the children and their mother “is not a parent child bond. [Respondent-Mother] typically interacts with the children as more like an aunt or a friend of the children.” Further, Respondent-Mother challenges the Finding: the children do not view “[Respondent-Mother] as an authority figure” and “have

accepted that [Respondent-Mother] will not do what she needs to do to have them placed with her.” We agree that these portions of Finding 76 are not supported by the evidence. However, as evidenced by the trial transcript, the Record reflects the trial court extensively considered the bond between Respondent-Mother and the children in making its best interests determination. Lastly, with respect to Finding 77, Respondent-Mother contends the finding “[Rebecca] and [Sienna] want to be adopted” is unsupported by the evidence. However, the evidence presented at trial, as Respondent-Mother concedes, reflects “[Rebecca] and [Sienna] are both open to adoption by their current foster parent.” Thus, Finding 77 is supported by competent evidence.

These Findings demonstrate the trial court considered the relevant factors listed in N.C. Gen. Stat. § 7B-1110(a). Thus, we conclude the trial court reached a reasoned Conclusion within the trial court’s discretion. Therefore, the trial court did not abuse its discretion in concluding it was in the best interests of the minor children to terminate Respondent-Mother’s parental rights. Consequently, we affirm the decision of the trial court terminating Respondent-Mother’s parental rights to the minor children.

II. Respondent-Father’s Appeal

Respondent-Father contends the trial court erred in failing to appoint Respondent-Father a Guardian ad litem. We disagree.

N.C. Gen. Stat. § 7B-1101.1(c) provides: “On motion of any party or on the

court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17." N.C. Gen. Stat. § 7B-1101.1(c) (2021). An "incompetent adult" is defined as:

An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2021). "[A] trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention [that] raise a substantial question as to whether the litigant is *non compos mentis*.'" *In re J.A.J.*, 381 N.C. 761, 768, 874 S.E.2d 563, 569 (2022) (alterations in original) (quoting *In re T.L.H.*, 368 N.C. 101, 106, 772 S.E.2d 451, 455 (2015)).

"We review a court's decision to inquire into a parent's competency as well as a decision to appoint a parental guardian ad litem due to the parent's incompetence for abuse of discretion." *Id.* (citation omitted). However, "[w]hen the record on appeal contains an appreciable amount of evidence tending to show that the litigant whose mental condition is at issue is not incompetent, the trial court, should not, except in the most extreme instances, be held on appeal to have abused its discretion by failing to inquire into that litigant's competence." *Id.* (citation and quotation marks omitted).

Here, the Record reflects Respondent-Father was present in court during the juveniles' pre-adjudication hearing, four permanency planning hearings, and two days of the termination of parental rights hearing. At the termination of parental rights hearing, Respondent-Father testified to the events leading to the children's removal and denied having mental health issues. Respondent-Father also participated in a Cognitive Capacity Screening Exam (CCSE), designed to screen for gross cognitive limitations which would raise concerns about the general quality of a patient's cognitive functioning. Respondent-Father's screening results were not indicative of any cognitive deficiency or limitation meriting further assessment or consideration as a complicating factor in his case. Thus, the Record reflects the trial court had ample opportunity to observe Respondent-Father and to gauge his competence. *See In re N.K.*, 375 N.C. 805, 812, 851 S.E.2d 321, 327 (2020) (holding the trial court did not abuse its discretion in not inquiring about the respondent's need for a Guardian ad litem where the court had "ample opportunity to gauge Respondent-Mother's competence" by observing her behavior during court proceedings). Therefore, the trial court did not abuse its discretion in not appointing Respondent-Father a Guardian ad litem. Consequently, we affirm the trial court's Order terminating Respondent-Father's parental rights to the minor children.

Conclusion

Accordingly, for the foregoing reasons, we affirm the Order terminating both Respondent-Mother and Respondent-Father's parental rights to the minor children.

IN RE: S.D., R.D., I.D.

Opinion of the Court

AFFIRMED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).