

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-490

Filed 21 November 2023

Guilford County, No. 19 JT 85

IN THE MATTER OF: S.E.B.

Appeal by respondent-appellant from orders entered 22 February 2023 by Judge A. Elizabeth Keever in Guilford County, District Court. Heard in the Court of Appeals 31 October 2023.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Brittany T. McKinney for guardian ad litem.

Anné C. Wright for respondent-appellant.

STROUD, Chief Judge.

Respondent-appellant appeals from an order terminating his parental rights on the grounds of willful failure to make reasonable progress, neglect, and having his parental rights previously terminated regarding another child. Because the evidence supports the findings of fact, which support the conclusion that respondent-appellant

willfully failed to make reasonable progress, we affirm.

I. Background

Sarah,¹ the biological child of respondent-appellant (“Father”), was born in July 2019 in Forsyth County, North Carolina. Sarah remained hospitalized after her birth as she tested positive for opiates and cocaine at birth. On 23 August 2019, Guilford County Department of Health and Human Services (“DHHS”) filed a juvenile petition alleging Sarah was a dependent and neglected juvenile.

On or about 20 September 2019, Father entered into a case plan with DHHS. Father’s case plan required that he: (1) “obtain and maintain stable and appropriate housing[;]” (2) complete a “Parenting Psychological[;]” (3) “obtain and maintain stable and verifiable employment and provide written documentation verifying employment[;]” (4) “complete a substance abuse assessment and comply with all recommendations[;]” (5) “complete drug screens within 24 hours at the request of [DHHS;]” and (6) to “*resolve any pending criminal charges*” along with “*not incur[ring] any new criminal*” charges. (Emphasis added.)

On 15 April 2020, the trial court adjudicated Sarah neglected and dependent. The trial court later entered several permanency planning orders. On or about 25 October 2021, DHHS filed a motion in the cause to terminate parental rights. On 22 February 2023, the trial court terminated Father’s parental rights determining there

¹ A pseudonym is used.

were sufficient grounds to terminate Father's parental rights for: (1) neglect under North Carolina General Statute Section 7B-1111(a)(1), (2) willful failure to make reasonable progress under Section 7B-1111(a)(2), and (3) prior involuntary parental termination under Section 7B-1111(a)(9). Father timely appealed.

II. Standard of Review

The standard for review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. If unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court.

In re M.J.S.M., 257 N.C. App. 633, 636, 810 S.E.2d 370, 372 (2018) (citation and quotation marks omitted).

III. Willful Failure to Make Reasonable Progress

Father contends the trial court erred in determining he willfully failed to make reasonable progress under North Carolina General Statute Section 7B-1111(a)(2). On appeal, Father contests several findings of fact as not supported by clear, cogent, and convincing evidence. Father groups his challenges to the findings of fact based on the specific ground for termination. Because only one ground is needed for termination, we will address only those findings necessary for the particular basis for termination. *See* N.C. Gen. Stat. § 7B-1111(a) (noting “[t]he court may terminate the parental rights upon a finding of one or more” of the listed grounds); *see also In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 421 (2019) (“Because a finding of only one

ground is necessary to support a termination of parental rights, we only address respondent-mother's argument regarding the basis for termination of her willful failure to make reasonable progress.”).

Here, we will address the ground of willful failure to make reasonable progress. *See generally* N.C. Gen. Stat. § 7B-1111(a)(2) (“The court may terminate the parental rights upon a finding of one or more of the following: . . . (2) The 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. No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.”). Since Father addressed his challenges to the findings of fact in groups based upon his challenge to a particular ground for termination, our analysis here has relied only upon unchallenged findings of fact or findings we have determined are supported by the evidence. In other words, we do not analyze the findings of fact Father challenged under his argument for any ground besides willful failure to make reasonable progress, but we also do not rely on those challenged facts in making our determination. In Father's argument regarding willful failure to make reasonable progress, Father challenges only four findings of fact.

A. Finding of Fact 27

Finding 27 provides,

27. As part of his [DHHS] case plan, [Father] was to obtain and maintain stable and appropriate housing. [Father] was previously living at an apartment with his wife . . . and [Father] was not on the lease. [Father] provided [DHHS] with a fraudulent lease on November 30, 2020 for an apartment he was leasing. [DHHS] contacted the property manager . . . on February 23, 2021 and learned that the lease was not valid. On August 18, 2021, [Father] began renting a home . . . in High Point, NC. It is a month-to-month lease, and his name is on it. His wife . . . lives there too. Her name is not on the lease. [DHHS] attends home visits every three months and have found there to be lots of cigarette butts in an ashtray and a strong smell of cigarette smoke in the home, as [Father] and [Father's wife] both smoke. The cigarette butts are unsanitary and dangerous, as [Sarah] may come into contact with them. [Father] admitted to smoking 7 cigarettes a day and has been smoking for at least the last 10 years. [Sarah] has asthma, so this is not suitable for her. Upon cross examination, [Father] indicated he would quit smoking if the child was placed in his home. Visits of the home were conducted on September 1, 2022 and November 14, 2022. Per [Father's] landlord, the month-to-month lease was done so it was easier for [Father] and [Father's wife] to be evicted if they needed to be removed. [Father] has not been cooperative with announced and unannounced home visits. There were several instances where [Father] would not let [DHHS] in his home. No home visits were attempted by [DHHS] since November 14, 2022.

As to finding 27, Father specifically challenges only the part which states he “has not been cooperative with announced and unannounced home visits. There were several instances when [Father] would not let [DHHS] in his home.”

Ms. Daphne Johnson, a social worker, testified,

When we go – when others go to the home and knock, *[Father] does not answer the door a lot of times*. There was an incident where Ms. Anna, she was knocking on the door.

[Father] wouldn't open the door, she went around to the back yard, and [Father] was watching her out the window and saw her walking around to the back yard. So he met her at the front door and asked her what did she want? And she told him that she had to keep doing visits . . . to find out what was going on in the home, if the home was stable.

(Emphasis added.)

Ms. Johnson's testimony is "clear, cogent, and convincing evidence" that Father was not cooperative with announced or unannounced home visits, and that "[t]here were several instances when [Father] would not let [DHHS] in his home." *M.J.S.M.*, 257 N.C. App. at 636, 810 S.E.2d at 372. Though Father counters that his testimony shows his failure to open the door was not purposeful, it is the trial court's duty to determine credibility, *see Phelps v. Phelps*, 337 N.C. 344, 357, 446 S.E.2d 17, 25 (1994) ("Issues of witness credibility are to be resolved by the trial judge. It is clear . . . that the trial judge, sitting without a jury, has discretion as finder of fact with respect to the weight and credibility that attaches to the evidence." (citation, quotation marks, and brackets omitted)), and "[a] trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019).

B. Finding of Fact 35

Finding 35 provides,

35. As part of his [DHHS] case plan, [Father] was to complete drug screens within 24 hours at the request of

[DHHS]. [Father] and [Father's wife] were requested to complete drug testing within 24 hours on April 14, 2021, and January 28, 2021. The testing, which was requested on April 14, 2021, has not been completed according to LabCorp. Additionally, there is no monitoring of drug tests at LabCorp, so [DHHS] is skeptical of the results. [Father] does not have hair, so LabCorp was unable to do hair follicle drug testing. All of [Father's] drug tests have to be urine testing. [Father] has complied with the following random drug tests and all tests have been negative: April 15, 2021, March 2, 2021, February 1, 2021, January 18, 2021, December 19, 2020, and December 1, 2020. [Father's wife] has submitted to random drug tests on the following dates with a negative test result: April 15, 2021, March 2, 2021, February 1, 2021, December 18, 2020, and December 1, 2020. [Father's wife] submitted to hair follicle testing on April 28, 2021, at which time she tested positive for Cocaine, Opioids, Benzoyllecgonine, and a 24-hour drug testing was requested for [Father's wife] on January 18, 2021, however there is no documentation of testing being completed. [Father] testified he completed additional drug screens along with his wife on September 2, 2022 and December 7, 2022. [Father] brought chain of custody receipts from LabCorp for these dates to court today.

As to finding 35, Father specifically argues, "[DHHS] asked Father to do a drug screen within 24 hours on 14 April 2021 and the testing was not completed. This finding is not supported as the trial court found that Father cooperated in a drug screen on 15 April 2021."

While the trial court may have simply made a typographical error, the part of finding 35 that states Father failed to do a drug screen within 24 hours of 14 April 2021 is erroneous since the trial court later states, in the same finding, Father submitted a negative drug test on 15 April 2021. Father's remaining challenge to

finding 35 is not about whether there was evidence to support the finding, but that the finding is “not indicative of willful failure to address the conditions underlying Sarah’s removal.” Again, Father asks us to credit his interpretation of the events over the trial court’s; this we will not do. *See generally Phelps*, 337 N.C. at 357, 446 S.E.2d at 25.

C. Findings of Fact 46 and 50

Findings 46 and 50 provide,

46. [Sarah’s mother] and [Father] have willfully left [Sarah] in foster care for more than 12 months without showing to the satisfaction of the Court that reasonable progress has been made in correcting the conditions that led to [Sarah’s] removal.

....

50. Grounds exist to terminate the parental rights of [Sarah’s mother] and [Father] pursuant to N.C.G.S. § 7B-1111(a)(2), given that the parents have willfully left [Sarah] 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 [Sarah] as follows:

a. [Sarah] has been in foster care continuously since August 23, 2019.

b. Despite the services that were offered to [Sarah’s mother] and [Father] since [Sarah] came into custody, [Sarah’s mother] and [Father] ha[ve] failed to show to the satisfaction of the court that they made reasonable progress toward correcting the conditions which led to the removal of [Sarah].

c. [Sarah] has remained in foster care for more than

twelve months due to [Sarah's mother] and [Father]'s inability to stop criminal activity and stop the use of drugs during her time in foster care.

The only parts of findings of fact 46 and 50 that Father challenges are actually a conclusion of law: “willfully left Sarah in foster care for more than 12 months without making reasonable progress under the circumstances[.]” We will address these portions appropriately below as “[w]e are obliged to apply the appropriate standard of review to a finding of fact or conclusion of law, regardless of the label which it is given by the trial court.” *In re J.S.*, 374 N.C. 811, 818, 845 S.E.2d 66, 73 (2020).

D. Conclusion of Law 3

Ultimately, Father argues the trial court erred in concluding he failed to make reasonable progress in correcting the conditions that led to Sarah's removal. Specifically, Father challenges the trial court's conclusion of law 3, which states “[g]rounds exist to terminate the parental rights of [Father], pursuant to N.C.G.S. § 7B-1111 (a)(1), (a)(2), and (a)(9).” In determining whether reasonable progress has been made, the relevant time period is from the time “a juvenile is left in foster care or placement” until “the hearing on the motion or petition to terminate parental rights.” *In re K.H.*, 375 N.C. 610, 613, 849 S.E.2d 856, 859-60 (2020).

Considering the appropriate time period, *see id.*, the trial court then uses a two-step analysis to determine 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.* at 613, 849 S.E.2d at 859. “[I]n order for a respondent’s noncompliance with [his] case plan to support the termination of [his] parental rights, there must be a nexus between the components of the court-approved case plan with which the respondent failed to comply and the conditions which led to the child’s removal[.]” *In re A.M.L.*, 377 N.C. 1, 12, 855 S.E.2d 439, 447 (2021).

As to prong (1), it is undisputed that Sarah has been in foster care or placement for over twelve months. In fact, she has been in foster care or placement since her release from the hospital about a month after her birth in July 2019. Father states, in his brief, that “Sarah had been in placement outside her home for more than 12 months when the order terminating Father’s parental rights was entered.” Thus, the only remaining issue is whether Father “made reasonable progress under the circumstances to correct the conditions which led to the removal of” Sarah. *See K.H.*, 375 N.C. at 613, 849 S.E.2d at 859.

As to prong (2), in determining whether reasonable progress has been made, “extremely limited progress is not reasonable progress” but “perfection is not required to reach the reasonable standard.” *In re C.N.*, 266 N.C. App. 463, 470-71, 831 S.E.2d 878, 883 (2019) (citation and quotation marks omitted). The primary reasons for Sarah’s placement outside the home were her parents’ substance abuse and many criminal charges and convictions related to the illegal drugs. As the trial court found,

Father actually testified he does not use illegal substances but “only possesses illegal substances,” as if his possession of illegal substances is unrelated to any risk involved for Sarah. Further, since Sarah was placed with DHHS, Father has tested positive for THC, cocaine, and methamphetamines. Father’s initial case plan dating back to September 2019 required him to “resolve any pending criminal charges” along with “not incur[ring] any new criminal” charges. But Father was charged with five crimes between November 2019 and August 2020, and at the time of the hearing, he had four other charges pending in Guilford County.

Father primarily relies on *In re A.N.H.*, 381 N.C. 30, 871 S.E.2d 792 (2022), to contend this Court should vacate and remand the termination order. In *A.N.H.*, this Court vacated and remanded a termination of parental rights order when the parent had previously had some positive drug tests, but in that case, the parent did not have multiple pending criminal charges, as Father does here. *See id.* Father’s continued criminal activity *alone* supports the trial court’s conclusion that he has not made reasonable progress under the circumstances in correcting the conditions that led to Sarah’s removal. Accordingly, we affirm.

IV. Conclusion

The trial court did not err in terminating Father’s parental rights under North Carolina General Statute Section 7B-1111(a)(2) for willful failure to make reasonable progress. We affirm.

AFFIRMED.

IN RE: S.E.B.

Opinion of the Court

Judges HAMPSON and GORE concur.

Report per Rule 30(e).