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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-276

Filed 19 December 2023

Yancey County, No. 20<sup>[1]</sup> JT 2

IN THE MATTER OF: R-M.M.A.

Appeal by respondent-father from order entered 12 December 2022 by Judge Hal G. Harrison in Yancey County District Court. Heard in the Court of Appeals 21 November 2023.

*Hockaday & Hockaday, P.A., by Daniel M. Hockaday, for petitioner-appellee Yancey County Department of Social Services.*

*Christopher S. Edwards for guardian ad litem.*

*Emily Sutton Dezio for respondent-appellant father.*

PER CURIAM.

Respondent-father appeals from the trial court's order terminating his parental rights to his minor child, R-M.M.A. (Reece).<sup>2</sup> He challenges the trial court's conclusion that his rights were subject to termination under N.C. Gen. Stat.

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<sup>1</sup> The trial court's order lists the file number as "20 JT 02." The filings in the case alternate between "20" and "21" file numbers because of a typographical error on the initial A/N/D petition.

<sup>2</sup> A pseudonym is used to protect the identity of the juvenile and for ease of reading.

§ 7B-1111(a)(2). We conclude father's arguments are meritless and affirm the termination order.

### **I. Background**

Petitioner Yancey County Department of Social Services (DSS) filed a petition and amended petition on 11 January 2021 alleging that Reece was a neglected and dependent juvenile. To support these allegations, DSS further alleged that on 10 January 2021, a DSS social worker was called to the home of respondent-father and respondent-mother, which was a modified school bus located on the property of the paternal grandparents.

After an altercation between father and the grandfather, father was ordered to leave the property. Father refused and was arrested for trespassing. Mother also refused to leave the property, even though the paternal grandparents told her she must leave, and she was arrested for trespassing. The paternal grandparents stated they were unable to watch Reece, and thus there was no one to care for her. As a result, DSS filed the petition and obtained nonsecure custody.

On 22 April 2021, the trial court entered an order adjudicating Reece to be a dependent juvenile. The trial court dismissed the neglect allegation. For disposition, the trial court ordered father to enter into a case plan with DSS, which the court required "to include Parenting Capacity Evaluations and suitable housing[.]" and to comply with the terms of the plan. Father was awarded three hours of weekly supervised visitation.

By the time of the first review hearing on 29 April 2021, father had entered into a case plan with DSS, which required him to: seek stable housing; seek employment; seek reliable transportation; submit to random drug screens by DSS; submit to a Parental Capacity Evaluation and follow its recommendations; and obtain a substance abuse assessment and follow its recommendations. In its 15 June 2021 order from that hearing, the trial court found that father did “not appear to understand all of the requirements of his” plan. Father had scheduled a Parental Capacity Evaluation and was attending visitations, but he had not secured stable housing, as he was again living in the school bus on his parents’ property, and he had not scheduled a substance abuse assessment. The trial court found that it was likely Reece could be returned to respondents’ home within six months. Supervised visitation continued at three hours per week.

The trial court’s orders from subsequent review and permanency planning hearings reflected that father continued to make progress on his case plan. By the time of the 12 April 2022 permanency planning hearing, father had obtained a comprehensive clinical assessment; secured adequate housing; obtained employment and transportation; participated in substance abuse treatment and tested negative on drug screens; was completing his second set of parenting classes; and was consistently exercising his visitation. In its 18 May 2022 order from that hearing, the court again found that Reece’s return to her parents’ home within six months was

likely. At that time, the primary permanent plan was reunification with a concurrent plan of adoption.

However, by the time the next hearing was conducted on 26 July 2022, father's progress had suffered significant setbacks, in that he had lost his employment; refused a drug screen on 22 June 2022 and tested positive for alcohol the next day; admitted to drinking on 4 July 2022; was arguing with mother during a visitation on 20 June 2022; and missed a visit with Reece four days later. In its 19 August 2022 order from the hearing, the court also found that respondents had been unable to demonstrate the skills they were taught in their parenting classes, were unable to secure Reece in her car seat, and were unlikely to be able to meet Reece's medical needs. The court changed the permanent plan to adoption with a concurrent plan of guardianship, relieved DSS of any obligation to pursue further reunification efforts, and it directed DSS to file a termination of parental rights petition within 30 days. Visitation was reduced to two hours per week.

DSS filed the termination petition as directed on 2 September 2022, alleging that the rights of both respondents and any unknown fathers should be terminated. As to father, DSS alleged two grounds for termination: willful failure to make reasonable progress in correcting the conditions of Reece's removal and failure to legitimate. *See* N.C. Gen. Stat. § 7B-1111(a)(2), (5) (2021).

The petition was heard over two days, on 19 and 21 October 2022. On 12 December 2022, the trial court entered an order concluding that one ground existed

to terminate father's rights under N.C. Gen. Stat. § 7B-1111(a)(2) and that termination was in Reece's best interests.<sup>3</sup> Father appeals.

## II. Adjudication

Father argues that the trial court erred by concluding his parental rights should be terminated based on a willful failure to make reasonable progress in correcting the conditions that led to Reece's removal under N.C. Gen. Stat. § 7B-1111(a)(2).

When reviewing the trial court's adjudication of termination grounds, the relevant questions are whether the court's findings of fact "are supported by clear, cogent and convincing evidence and [whether] the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (citations omitted). The trial court's conclusions of law are reviewed de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

The trial court may terminate a parent's rights upon a finding that "[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).

Termination under this ground requires the trial court to perform a two-step analysis where it must determine by

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<sup>3</sup> The order also terminated the parental rights of mother and any unknown fathers, but father is the only party who appealed.

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.

*In re Z.A.M.*, 374 N.C. 88, 95-96, 839 S.E.2d 792, 797 (2020) (citation omitted).

“[P]arental 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).” *In re B.O.A.*, 372 N.C. 372, 384, 831 S.E.2d 305, 313 (2019). “However, compliance or noncompliance with a case plan is not, in and of itself, determinative of a parent’s reasonable progress in correcting the conditions that led to a child’s removal from the home.” *In re B.J.H.*, 378 N.C. 524, 554, 862 S.E.2d 784, 805 (2021) (citation omitted).

“[T]he reasonableness of the parent’s progress [is] to be assessed as of the date of [the] termination hearing.” *In re D.A.A.R.*, 377 N.C. 258, 266, 857 S.E.2d 295, 302 (2021) (citation omitted).

## **A. Challenged Findings of Fact**

Father challenges several of the trial court’s findings regarding his willful failure to make reasonable progress.<sup>4</sup>

### **1. Finding of Fact 13**

13. That the respondent parents have made some progress

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<sup>4</sup> Father also challenges finding of fact 20, which is unrelated to this termination ground. Accordingly, we need not review this challenge as part of our review of this ground. *See In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58-59 (2019) (“[W]e review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.”) (citation omitted).

on the DSS case plan. The respondent parents continue to reside together. The respondent mother is not currently employed. The respondent father lost employment approximately six months ago; has provided documentation of recent employment.

Father argues that the portion of this finding discussing his employment is unsupported. However, DSS social worker Noah Worley testified at the October termination hearing that father had lost his job at Goodwill either “at the end of March” or shortly after the 12 April 2022 permanency planning hearing and that father reported new employment at the September child and family team meeting. Father also submitted a letter regarding his new employment at the hearing. The testimony and letter provide clear, cogent, and convincing evidence to support this finding.

## ***2. Finding of Fact 14***

14. That the respondent parents recently refused a requested drug screen on 22 June, 2022; the respondent father tested positive for alcohol . . . and marijuana use in November, 2021; the respondent father admitted to drinking again on 04 July, 2022 at a party at a neighbor’s house; has been unable to produce . . . random drug screens, including 18 July, 2022 and 08 August, 2022; his recent relapse has resulted in an increase in his therapy; the respondent father has been unable to maintain his sobriety; the parents missed a random drug screen scheduled on 04 October, 2022.

Father argues that the portion of this finding stating that he was “unable to maintain his sobriety” is unsupported because he has been “clean and sober with exactly one night of use of alcohol shortly after DSS told him they were going to move their plan

to adoption[.]” referring to father’s admitted alcohol use on 4 July 2022. Father mischaracterizes the evidence regarding his sobriety, which reflects more than “one night of use of alcohol” while Reece was in DSS custody. Social worker Worley testified that one of the components of father’s case plan was for him to maintain sobriety, but father tested positive for marijuana in September 2021 and positive for alcohol in November 2021. Worley further testified that father refused to provide a drug screen on 22 June 2022, despite being offered transportation to and from the screen; that father’s treatment provider, October Road, reported that father had a positive alcohol screen on 23 June 2022; and that when Worley spoke to father about that positive screen at a subsequent meeting, father admitted that he had been drinking as recently as 4 July 2022. Worley also stated that between the date of that positive screen and the date of the termination hearing, father was unable to produce samples for requested drug screens on 18 July 2022 and 8 August 2022 and failed to report for a requested screen on 4 October 2022, just two weeks before the termination hearing. Taking this testimony into consideration, the trial court’s findings that father was unable to maintain sobriety are supported by clear, cogent, and convincing evidence.

***3. Finding of Fact 15***

15. That the respondent parents participated in two (2) sets of parenting classes; despite these efforts, the respondent parents have been unable to demonstrate the skills they learned in the parenting classes while providing for the care of the juvenile. The parents have been unable to

properly secure the juvenile in a car seat. The juvenile has extensive medical issues and allergies; the parents have been unable to properly ensure these medical needs are met during visitations. That at the time the juvenile came into DSS custody, the juvenile was suffering from a number of medical issues, including her neck, head, skin and allergies; the juvenile was required to wear a helmet for the purpose of reshaping her head once the juvenile came into DSS custody. The parents have not demonstrated that they have a full understanding of the juvenile's dietary restrictions. That during recent visitations, the respondent parents have been engaged in arguments and called each other names. These behaviors have been observed by both the DSS worker and the foster parent. The respondent parents recently missed visitation on 24 June, 2022.

Father takes issue with multiple parts of this finding. First, he contends that the portion of the finding stating that “[t]he parents have been unable to properly secure the juvenile in a car seat” does not identify which parent was unable to secure Reece in her car seat. However, there was no need for the court to identify a specific parent; both social worker Worley and Reece's foster mother testified that both parents were unable to properly secure Reece in the seat.

Next, father argues that the portions of the finding suggesting that the parents were unable to care for Reece's medical needs, both before Reece entered DSS custody and during visitations after Reece entered foster care, were unsupported by the evidence. This argument is meritless, as Worley testified that when Reece came into DSS custody, she had “a plethora of medical concerns,” including that the bones of her skull were not going into formation properly as well as severe allergies. The foster mother also testified about an occasion when she explained to mother that when

Reece came into custody, she needed a helmet and was covered in a rash from her head to her toes.

As to visitations, Worley testified that respondents were witnessed offering Reece foods that were specifically on her allergen list. The foster mother also testified that at times, both parents seemed to understand Reece's allergies but at other times, they were unable to demonstrate this understanding. Thus, there was clear, cogent, and convincing evidence to support the challenged portions of this finding that discussed respondents' inability to adequately deal with Reece's medical issues.

Finally, father argues that the portion of this finding that states that he and mother were engaged in arguments and name-calling during recent visitations was unsupported by the evidence. This challenge is also meritless. Worley testified that Reece's foster parents had informed him of disputes between the parents during visits, including a dispute so severe during the last visit that the foster mother felt compelled to remove her own children from the room. The foster mother also testified that she witnessed minor bickering between the parents during three visits, but during the last visit, "it seem[ed] like 85 percent of the visit was just arguing." This included the parents "arguing about everything that they did" during the visit and "some name calling," which led to the foster mother moving her children into a different room. The testimony from these two witnesses provides clear, cogent, and convincing evidence to support this portion of finding 15.

**B. Willful Failure to Make Reasonable Progress**

Father also challenges the trial court's more generalized findings that led to its ultimate conclusion that his rights were subject to termination under section 7B-1111(a)(2) for willful failure to make reasonable progress:

11. The Court finds by clear, cogent, and convincing evidence that the respondent parents have 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 as prescribed by N.C. Gen. Stat. § 7B-1111 (a) (2). This Petition is not filed for the sole reason that the parents are unable to provide for the care of the juvenile on account of their poverty. The juvenile was placed in the legal custody of the Petitioner . . . since that time; as of the date of the filing of this Petition has been placed in the legal custody of the Petitioner for a period of more than 19 months.

. . . .

19. That the failure of the respondents to comply with the DSS case plan and eliminate the reasons the juvenile came into custody demonstrates their failure to correct the conditions which led to the removal of the juvenile.

. . . .

23. That the Court finds by clear, cogent and convincing evidence that it is in the best interests of the juvenile that the parental rights of the respondent[-mother]; [respondent-father]; and any unknown fathers (John Does) be terminated. The juvenile has been placed in DSS custody for a period of more than 19 months at the time of the filing of this Petition (now 21 months); the respondent parents have failed to make reasonable progress under the circumstances to correct the conditions which led to the removal of the juvenile; that the respondent parents' visitations have now been reduced to two (2) hours per week, supervised; the respondent father has been unable to maintain sobriety; the respondent parents are unable to

demonstrate the skills learned in parenting classes that each has participated in; the respondent parents are unable to meet the extensive medical needs of the juvenile; that DSS has now been relieved of providing further reasonable efforts to reunify the juvenile with the respondent parents . . . .

Father contends that the evidence presented at the termination hearing fails to show that he willfully failed to make reasonable progress, in that he completed several components of his case plan: he obtained adequate housing; was employed at the time of the termination hearing; obtained a comprehensive clinical assessment and was attending therapy; engaged in substance abuse treatment; and completed two parenting classes.

[A] finding that a parent acted willfully . . . does not require a showing of fault by the parent. A respondent'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 J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (quotation marks, brackets, ellipsis, and citations omitted).

While we agree with father that he made some progress on his case plan during the twenty-one months that elapsed between the time Reece entered DSS custody and the time of the termination hearing, we do not agree that the trial court erred by concluding this progress was not reasonable and that his failure to make reasonable progress was willful. The trial court's supported findings reflect that after twenty-one

months, father still struggled with his sobriety, suffering at least two separate relapses in November 2021 and June/July 2022 and failing to submit any negative drug screens after this second relapse. Moreover, although father had a new job by the time of the termination hearing, he was unemployed for several months prior to obtaining that job. While father completed two separate parenting courses, he still could not demonstrate the necessary skills from those classes during his visits with Reece; father did not demonstrate consistent knowledge of what foods would trigger Reece's allergies, and he could not securely fasten her in her car seat.

The existence of these major concerns at the time of the termination hearing was sufficient to allow the trial court to conclude that father willfully left Reece in DSS custody without making reasonable progress to correct the conditions of removal, even though father met some of his case plan goals. Accordingly, we conclude that the trial court properly adjudicated grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(2).

### **III. Conclusion**

The trial court made sufficient findings of fact, supported by clear, cogent, and convincing evidence, to sustain its conclusion that father's rights were subject to termination under N.C. Gen. Stat. § 7B-1111(a)(2). Father does not challenge the trial court's determination that termination was in Reece's best interests. Accordingly, we affirm the termination order.

**AFFIRMED.**

IN RE: R-M.M.A.

*Opinion of the Court*

Panel consisting of Judges MURPHY, COLLINS, and HAMPSON.

Report per Rule 30(e).