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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-912

Filed 16 April 2024

Mecklenburg County, No. 21JT16

IN THE MATTER OF: P.N.F.

Appeal by respondent-mother from order entered 19 June 2023 by Judge Faith A. Fickling-Alvarez in Mecklenburg County District Court. Heard in the Court of Appeals 6 March 2024.

Mecklenburg County Youth and Family Services, by Kristina A. Graham, for petitioner-appellee.

Womble Bond Dickinson, by Samuel B. Hartzell and Ting Zheng, for guardian ad litem.

Garron T. Michael, for respondent-appellant mother.

FLOOD, Judge.

Respondent-Mother appeals a trial court order terminating her parental rights to her minor child P.N.F. (“Piper”).¹ After careful review of the Record, we hold the trial court’s conclusions regarding willfulness are supported by clear, cogent, and

¹ A pseudonym is used to protect the identity of the juvenile in accordance with N.C.R. App. P. 42.

convincing evidence. Accordingly, we affirm the trial court's termination of Respondent-Mother's parental rights.

I. Facts and Procedural Background

Piper was born on 8 January 2012 and lived with Respondent-Mother until approximately 26 April 2020 when a report of child abuse was made to Mecklenburg County Youth and Family Services ("YFS"). Upon investigation, it was discovered that Piper and her younger half-sister² were living in a hotel room with Respondent-Mother and Respondent-Mother's boyfriend, Mr. Weston.³ Piper had confided in an adult that Mr. Weston would hide drugs and hypodermic needles in her bookbag. Mr. Weston was subsequently charged with misdemeanor child abuse, Piper and her half-sister were placed with a temporary safety provider, and Respondent-Mother entered into a Family Services Case Plan (the "case plan"). Pursuant to the case plan, Respondent-Mother was to attend parenting education, substance abuse treatment, and domestic violence counseling.

Respondent-Mother initially complied with the case plan by presenting for a clinical assessment at a recovery center in May 2020. Following the assessment, Respondent-Mother was diagnosed with severe cocaine use disorder and mild amphetamine use disorder, and it was recommended she enroll in an intensive

² As permanency has been achieved for Piper's younger half-sister, she is not a party to this case.

³ A pseudonym is used in accordance with N.C.R. App. P. 42.

outpatient treatment plan. On 20 August 2020, Respondent-Mother entered a treatment plan but attended only thirty-three of the fifty-nine scheduled sessions. Upon discharge from the treatment plan, the treatment provider noted that Respondent-Mother had “poor attendance which made it challenging to conduct random [drug screens,]” and that she had falsified urine samples. Respondent-Mother’s diagnosis at discharge mirrored her diagnosis upon admission: severe cocaine use disorder and mild amphetamine use disorder.

On 10 November 2020, Respondent-Mother began a short-term substance use treatment program that was scheduled to occur over twenty hours, during which she would submit to drug screens. Respondent-Mother completed twelve hours and failed to present for drug screens at the scheduled time. While Respondent-Mother made efforts to comply with the case plan, YFS made efforts to prevent removal of Piper from Respondent-Mother’s custody—to no avail. These efforts included identifying collateral contacts who could provide support to Respondent-Mother, following up with substance use treatment facilities to ensure Respondent-Mother was attending treatment, and providing Respondent-Mother with referrals to appropriate services. Despite YFS’s efforts to prevent removal, on 8 January 2021, Piper was ordered into the nonsecure custody of YFS.

Respondent-Mother continued her engagement in the case plan, completing both a domestic violence class and a parenting class. Respondent-Mother also continued to attend substance use treatment programs, but on 16 February 2021, she

tested positive for amphetamines and methamphetamines. Due to Respondent-Mother's lack of progress in the case plan, she was asked to complete an updated assessment to determine the appropriate level of care and supervision needed for her to advance towards reunification with Piper. On 3 March 2021, Respondent-Mother completed the new assessment, which included recommendations that she complete a substance use assessment, complete a mental health assessment, continue receiving domestic violence counseling, and connect with Carolina Outreach for parenting support services.

On 29 March 2021, Respondent-Mother completed the recommended substance use assessment and was diagnosed with opioid dependence, cocaine dependence, severe amphetamine substance use disorder, adjustment disorder, anxiety, and post-traumatic stress disorder.

At a hearing on 28 April 2021, Piper was adjudicated to be a neglected juvenile, and the trial court determined she should remain in the legal custody of YFS.

Despite Respondent-Mother's continued involvement with outpatient treatment programs, she tested positive for amphetamines and heroine on 27 July 2021. At a permanency planning hearing on 20 August 2021, the trial court found that Respondent-Mother lacked stable housing, had acquired several new criminal charges, and continued to test positive for drugs. The trial court did, however, find that there was no evidence Respondent-Mother had continued her contact with Mr. Weston. Following the permanency planning hearing, Respondent-Mother enrolled

in a structured sober living community, but left after fewer than three weeks.

At the Permanency Planning hearing on 8 February 2022, the trial court found that Respondent-Mother was not attending her visits with Piper and had not submitted to drug screens, and ultimately determined that she was not making reasonable progress. The trial court elected “to provide [Respondent-M]other with one more review period to demonstrate substantial progress on her case plan before the [trial c]ourt consider[ed] whether to order the filing of a TPR action[.]” At the end of the hearing, the trial court changed the primary plan from reunification to adoption.

At the subsequent Permanency Planning hearing on 18 May 2022, the trial court found Respondent-Mother had not completed any random drug screens, had not engaged in any case plan services, had relapsed with cocaine use for six months, had not maintained consistent contact with YFS, and did not have safe and appropriate housing. Based on those findings, the trial court reduced Respondent-Mother’s visitation with Piper to fifteen minutes of therapeutically-guided visitation once every other week.

Respondent-Mother failed to appear at the 13 September 2022 Permanency Planning hearing, but despite her absence, the trial court was able to confirm that she had obtained housing. With respect to the rest of her case plan, however, the trial court again found Respondent-Mother was not engaging in random drug screens, consistently contacting YFS, participating in substance use treatment, or showing up

to scheduled visits with Piper. Due to Respondent-Mother's lack of progress in her case plan, YFS filed a Termination of Parental Rights ("TPR") petition on 21 October 2022. In the TPR petition, YFS alleged it had "explored all known relative and fictive kin placement options provided by [Respondent-M]other" and that none of those options were viable.

The TPR hearing occurred over two days—28 April 2023 and 17 May 2023—at which Shelly Allen ("Ms. Allen"), a social worker with YFS, testified and provided exhibits, which were entered into evidence. During Ms. Allen's testimony, she was asked if Respondent-Mother had offered alternative placement options for Piper, and Ms. Allen responded, "[n]o, she has not indicated any relatives that would be appropriate placements." At the conclusion of the hearing, the trial court made oral findings from the bench, which included a finding that Respondent-Mother "has not provided an available alternative childcare arrangement for [Piper,]" and therefore grounds exist to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(6) (2023).

Following the hearing, the trial court entered an order (the "TPR Order") terminating Respondent-Mother's parental rights. In the TPR Order, the trial court found the following facts by clear, cogent, and convincing evidence:

9. Throughout much of 2021, [Respondent-Mother] was successfully engaging and participating in substance abuse treatment and provided multiple negative (i.e. clean) drug screens. During this same time, she was engaging in services with Family First and Monarch. In

August/September 2021, [Respondent-Mother] was offered an opportunity to live at Hope Haven (a sober living community). [Respondent-Mother] declined this offer. At the time [Respondent-Mother] knew that [Piper] could have additional visitation with her at Hope Haven.

10. In January 2022, [Respondent-Mother] stopped attending FIRST Family Drug Treatment Court (FDTC) and was ultimately discharged from FDTC due to non-compliance. [Respondent-Mother] did not meaningfully engage in services and ameliorate the removal conditions during the calendar year of 2022.

....

13. Since . . . early March 2023, [Respondent-Mother] has not demonstrated that she ha[s] engaged in either substance abuse or mental health services sufficiently to ameliorate the substance abuse or mental health removal conditions.

14. [Respondent-Mother] claimed in her adjudicatory testimony that the March 2023 positive result was not due to her use of cocaine but rather due to her merely touching the cocaine. Her testimony in this regard is not credible. She appears to still be using the drug.

15. [Respondent-Mother] is not able to provide safe placement because she is still using drugs after having a very long history of using/abusing same. Even if her testimony of merely touching the cocaine is accepted as true, she would still be unable to provide safe placement because at a minimum she engaged in poor decision making by remaining [in] the presence of the drug (and touching same) rather tha[n] leaving the circumstances. Regardless, she has not meaningfully addressed the removal condition of substance abuse.

16. Given the sporadic engagement in services and recent use of cocaine, there remains substantial risk of harm for this child. Therefore, there remains a likelihood of repetition of neglect.

Based on those findings, the trial court concluded that Respondent-Mother “failed to provide proper care, supervision and discipline for [Piper] and there remains a high probability of the repetition of neglect.” Further, Respondent-Mother “willfully left [Piper] in foster care for more than [twelve] months” and is “incapable of providing proper care and supervision such that [Piper] is dependent[.]”

Ultimately, Respondent-Mother’s parental rights were terminated, and the TPR Order was filed on 19 June 2023. Respondent-Mother timely appealed.

II. Jurisdiction

This Court has jurisdiction to review the termination of Respondent-Mother’s parental rights pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

III. Analysis

On appeal, Respondent-Mother argues the trial court erred when it concluded grounds existed to terminate her parental rights based on willfulness, abuse and neglect, and dependency.

“[A]n adjudication of any single ground for terminating a parent’s rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order [I]f this Court upholds the trial court’s order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citations omitted).

This Court reviews a district court’s adjudication of grounds to terminate

parental rights to determine “whether the findings [of fact] are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984) (citation omitted). A trial court’s “conclusions of law are reviewable *de novo* on appeal.” *In re K.D.C.*, 375 N.C. 784, 788, 850 S.E.2d 911, 915 (2020) (quoting *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019)). “Unchallenged findings ‘are deemed to be supported by sufficient evidence and are [also] binding on appeal.” *In re P.T.W.*, 250 N.C. App. 589, 594, 794 S.E.2d 843, 848 (2016) (alteration in original) (citation omitted).

Respondent-Mother argues the trial court erred in concluding grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) because the facts show that her “collective efforts amounted to reasonable progress under the circumstances.” We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), a trial court may terminate the parental rights of someone who “has willfully left the juvenile in foster care or placement outside the home for more than [twelve] 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) (2023). A showing of willfulness is “established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort.” *In re K.D.C.*, 375 N.C. at 793, 850 S.E.2d at 918. “Unchallenged findings of fact ‘are deemed supported by competent evidence and are binding on appeal.” *In*

re A.M., 377 N.C. 220, 225, 856 S.E.2d 801, 806 (2021) (quoting *In re J.S.*, 374 N.C. at 814, 845 S.E.2d at 71).

On appeal, Respondent-Mother argues the findings of fact in the TPR Order are not supported by the evidence presented and therefore, do not support the conclusion that she willfully left Piper in the custody of YFS for more than twelve months. Respondent-Mother specifically takes issue with Findings of Fact 10, 13, 14, 15, and 16. We analyze each in turn.

1. *Finding of Fact 10*

Finding of Fact 10 states that, “[i]n January 2022, [Respondent-Mother] stopped attending FIRST Family Drug Treatment Court (FDTC) and was ultimately discharged from FDTC due to non-compliance. [Respondent-Mother] did not meaningfully engage in services and ameliorate the removal conditions during the calendar year of 2022.”

In her argument, Respondent-Mother points to the language, “did not meaningfully . . . ameliorate the removal conditions during the calendar year of 2022,” stating that “[a]s drafted, this portion of [the finding] is unsupported by the evidence.” While it is true that the facts in the Record tend to show Respondent-Mother was no longer in contact with Mr. Weston and had acquired stable housing, the Record is replete with evidence that Respondent-Mother continued to use drugs and failed to complete every substance abuse program in which she enrolled. Given that completion of substance use treatment was one of the primary requirements under

the case plan, Respondent-Mother's failure to complete such a program and continued substance use constitute competent evidence to support the finding that she did not "meaningfully . . . ameliorate the removal conditions." *See In re K.D.C.*, 375 N.C. at 792, 850 S.E.2d at 918.

2. Finding of Fact 13

Finding of Fact 13 states that since "early March 2023, [Respondent-Mother] has not demonstrated that she ha[s] engaged in either substance abuse or mental health services sufficiently to ameliorate the substance abuse or mental health removal conditions."

Respondent-Mother argues the broad language of Finding of Fact 13 "ignores the progress that [she] showed at times over the entirety of Piper's case." While Respondent-Mother was able to stay sober for periods of time throughout the history of Piper's case, the Record reveals Respondent-Mother tested positive for cocaine in March 2023, just one month before the TPR hearing was scheduled. This is just one instance of Respondent-Mother testing positive for drugs in addition to the two positive drug screens and several scheduled screenings at which Respondent-Mother did not show, as discussed above. Additionally, the finding that Respondent-Mother had not sufficiently engaged in mental health services was supported because she had been referred to trauma therapy, but there is no evidence in the Record that she consistently engaged in services. For those reasons, we conclude Finding of Fact 13 was supported by competent evidence. *See In re K.D.C.*, 375 N.C. at 792, 850 S.E.2d

at 918.

3. Finding of Fact 14

Finding of Fact 14 states that “[Respondent-Mother] claimed in her adjudicatory testimony that the March 2023 positive result was not due to her use of cocaine but rather due to her merely touching the cocaine. Her testimony in this regard is not credible. She appears to still be using the drug.”

Respondent-Mother argues that Finding of Fact 14 is “unsupported to the extent it purports to be a finding of ongoing cocaine use[.]” Because Respondent-Mother had not produced a negative drug screen at the time of the TPR hearing, however, the finding that she “appears to still be using” cocaine is supported. With an absence of any evidence to the contrary, Finding of Fact 14 was supported by evidence in the Record that Respondent-Mother was continuing to use cocaine. *See In re K.D.C.*, 375 N.C. at 792, 850 S.E.2d at 918.

4. Findings of Fact 15 and 16

Respondent-Mother makes a general argument regarding Findings of Fact 15 and 16, stating broadly these findings can be “more accurately characterized as conclusions of law as they require applications of legal principles.” Finding of Fact 15 states:

[Respondent-Mother] is not able to provide safe placement because she is still using drugs after having a very long history of using/abusing same. Even if her testimony of merely touching the cocaine is accepted as true, she would still be unable to provide safe placement because at a

minimum she engaged in poor decision making by remaining [in] the presence of the drug (and touching same) rather tha[n] leaving the circumstances. Regardless, she has not meaningfully addressed the removal condition of substance abuse.

Further, Finding of Fact 16 states that, “[g]iven the sporadic engagement in services and recent use of cocaine, there remains substantial risk of harm for this child. Therefore, there remains a likelihood of repetition of neglect.”

The trial court’s mis-classification of a conclusion of law as a finding of fact, or *vice versa*, is typically inconsequential. *See State ex rel. Utils. Comm. v. Eddleman*, 320 N.C. 344, 352, 358 S.E.2d 339, 346 (1987) (holding that such “mislabeling is merely an inconvenience to the courts”). “If a contested ‘finding’ is more accurately characterized as a conclusion of law, we simply apply the appropriate standard of review and determine whether the remaining facts found by the court support the conclusion.” *In re B.W.*, 190 N.C. App. 328, 335, 665 S.E.2d 462, 467 (2008) (citation omitted). Applying our *de novo* standard of review, we conclude the Record contains ample evidence to support both Finding of Fact 15 and Finding of Fact 16. Respondent-Mother’s recent relapse, inability to remain sober, falsification of urine samples, and refusal to participate in sober living communities all support the trial court’s finding that Respondent-Mother “has not meaningfully addressed the removal condition of substance abuse” and therefore, there is a likelihood of future neglect.

Our review reveals Record evidence to support the statements made in both Findings of Fact 15 and 16, therefore, we conclude the mislabeling is inconsequential. *See Eddleman*, 320 N.C. at 352, 358 S.E.2d at 346.

Because Findings of Fact 10, 13, 14, 15, and 16 were all supported by evidence in the Record, we hold the trial court was correct in determining Respondent-Mother willfully left Piper in a placement outside her home, and thus grounds to terminate Respondent-Mother's parental rights existed under N.C. Gen. Stat. § 7B-1111(a)(2). *See In re K.D.C.*, 375 N.C. at 792, 850 S.E.2d at 918. Given our conclusion that grounds existed to terminate Respondent-Mother's rights under N.C. Gen. Stat. § 7B-1111(a)(2), we need not address Respondent-Mother's arguments relating to abuse and neglect or dependency. *See In re J.S.* 374 N.C. at 815, 845 S.E.2 at 71.

IV. Conclusion

We hold the trial court's findings of fact regarding willfulness are supported by clear, cogent, and convincing evidence. In turn, those findings of fact support the conclusion that grounds to terminate Respondent-Mother's parental rights exist under N.C. Gen. Stat. § 7B-1111(a)(2). Accordingly, we affirm the trial court's termination of Respondent-Mother's parental rights.

AFFIRMED.

Judges STROUD and CARPENTER concur.

Report per Rule 30(e).