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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-976

Filed 4 June 2024

Onslow County, No. 21JT186

IN THE MATTER OF: J.R.S.

Appeal by respondent-mother from order entered 28 June 2023 by Judge James W. Bateman, III in Onslow County District Court. Heard in the Court of Appeals 1 May 2024.

Richard Penley for petitioner-appellee Onslow County Department of Social Services.

BJK Legal, by Benjamin J. Kull, for respondent-appellant-mother.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F.E. Smith, for the guardian ad litem.

GORE, Judge.

Respondent-mother appeals from the trial court's 28 June 2023 order terminating her parental rights to Jerry.¹ Respondent does not challenge the trial court's best interests determination in the dispositional phase, and thus, the only issues presented concern whether the trial court correctly adjudicated the existence

¹ A pseudonym.

of grounds to terminate her parental rights based on failure to make “reasonable progress under the circumstances[,]” N.C.G.S. § 7B-1111(a)(2), and dependency, § 7B-1111(a)(6). Upon review, we affirm.

I.

Jerry first came to the attention of the Onslow County Department of Social Services (“DSS”) on 21 May 2021 when a child protective services (“CPS”) report raised concerns about Jerry’s exposure to parental substance abuse in the home. DSS remained involved with the family after CPS received a second report which alleged, in the form of neglect: injurious environment, substance abuse, and domestic violence. The reporter alleged the adults in the home, including respondent-mother, were using heroin and methamphetamines in the presence of the juvenile and were engaged in domestic violence, which on at least one occasion, caused Jerry to be knocked down.

Respondent-mother tested positive for methamphetamine and amphetamine on 9 July 2021, and positive for cocaine and marijuana on 3 August 2021. Jerry was not removed from the home, but multiple temporary safety providers agreed to provide supervision over respondent-mother.

On 15 October 2021, DSS received additional reports regarding neglect and dependency of Jerry. A social worker arrived at the home and discovered respondent-mother in the bathroom—unresponsive—with a syringe in her hand. Respondent-mother was revived by lifesaving procedures (CPR) administered by the social worker

in conjunction with Narcan administered by Emergency Medical Services (“EMS”). After being revived, respondent-mother admitted to using fentanyl before she overdosed and admitted to using fentanyl daily.

DSS filed a petition alleging Jerry to be neglected and dependent on 15 October 2021, and obtained an order for non-secure custody. On 20 October 2021, respondent-mother screened and was positive for heroin, buprenorphine, norbuprenorphine, codeine, and morphine. On 9 November 2021, she tested positive for amphetamines, methamphetamines, and morphine. Respondent-mother checked herself into Dix Crisis Intervention. On 24 November 2021, respondent-mother was admitted to the hospital and was diagnosed with Hepatitis A. On 21 December 2021, she again tested positive for amphetamines, methamphetamines, buprenorphine, norbuprenorphine, and marijuana. Five months later, respondent-mother voluntarily entered a twelve-month substance abuse program, and she subsequently transferred to Hoving Home in New York.

Seven months later, the trial court adjudicated Jerry to be dependent. While undergoing substance abuse treatment, respondent-mother was drug tested and was negative for substances. On 24 May 2022, the trial court conducted a dispositional hearing and ordered Jerry into the full custody of the Onslow County DSS.

The trial court noted in the findings of fact in the dispositional order that respondent-mother was drug screened and positive for substances from October 2021 to February 2022 prior to her admission to Hoving Home. The court also found as

fact that respondent-mother attempted drug treatment multiple times since DSS was involved in 2021 until her transfer to Hoving Home in New York. The trial court ordered a permanency planning hearing for August of 2022.

On 3 October 2022, the trial court conducted a permanency planning hearing. By this time, Jerry was out of the home for 339 days. The trial court made findings of fact regarding respondent-mother's continued progress while in treatment for her substance abuse issues and indicated that she would be released from treatment in March of 2023, and then, upon completion, be released into a transitional living program through Hoving Home. The trial court changed the primary permanent plan to guardianship with a secondary plan of reunification and ordered a review of the matter again a month later.

A month later, on 27 October 2022, respondent-mother terminated her participation in the program against the advice of substance abuse counselors. This occurred over three weeks after the first permanency planning hearing and 396 days since Jerry had been out of the home. The guardian ad litem ("GAL") documented in the juvenile's court report for November that, after respondent-mother left the treatment program, the social worker was unable to contact her.² As noted in the GAL court report for November, respondent-mother left the facility against the

² DSS Court report dated 28 November 2022 states, Ms. Hannah (someone from Hoving Home) indicated respondent-mother left impulsively against the advice of counselors and did not indicate where she was going.

counselors' advice and "failed to complete the year long program or receive her six-month completion certificate." The GAL further noted that before respondent-mother left Hoving Home, she had "multiple three-day passes," which afforded her an opportunity to spend time with Jerry, but she refused to see him in North Carolina after voluntarily leaving the facility. DSS recommended at the permanency planning hearing in November that the permanent plan include a primary plan of reunification with a secondary plan of adoption. The GAL report recommended a primary plan of adoption and a secondary plan of reunification.

On 28 November 2022, the trial court found as fact that respondent-mother had left the substance abuse treatment facility against advice of her treatment team, and that she stated to a social worker that visiting Jerry on an extended three-day leave for only one day was "not worth the trip." The trial court further found that during a video visitation with Jerry, respondent-mother "appeared unwell. . . . [Her] speech was sluggish, and she was unable to recite the alphabet with the juvenile. She appeared to be under the influence of an impairing substance." Prior to the hearing, on 15 November 2022, the social worker texted respondent-mother about participating in a drug screen and her response was that she was still in New York. The trial court changed the primary permanent plan to a primary plan of adoption and a secondary plan of reunification and ordered respondent-mother to enroll and successfully complete an inpatient rehabilitation program specializing in substance abuse and to review the matter on 13 February 2023.

The social worker made multiple attempts to contact respondent-mother since she left inpatient rehab on 27 October 2021 and was able to make phone contact with her on 26 January 2023. The social worker informed respondent-mother that she needed to get back into and complete inpatient treatment, but respondent-mother stated she would look into outpatient treatment instead.

On 10 February 2023, Onslow County DSS filed a petition to terminate the parental rights of respondent-mother and an unknown father. At a hearing on 5–6 June 2023, respondent-mother testified that, after leaving Hoving Home, she decided to remain in New York because the “[p]eople, places, and things” in North Carolina were “why [her] substance abuse took off” in the past. She testified that in January 2023, she had an assessment at a facility in New York called Twin Counties, for any mental health or substance abuse needs; that assessment showed she needed mental health counseling, but not substance abuse treatment. She also signed a release with Twin Counties for Onslow DSS to request copies of drug screen results.

The social worker attempted to verify respondent-mother’s statement that she completed a substance abuse assessment and drug screen, but Twin Counties could not provide verification to either Onslow County social worker or Community Prevention, a substance abuse treatment organization in Onslow County that could assist with coordinating substance abuse services between North Carolina and New York. After unsuccessful attempts at verifying respondent-mother’s claims regarding treatment, social worker asked respondent-mother to provide the documents directly

to her or sign releases to Community Prevention. Respondent-mother maintained that she signed consent releases for everybody.

By the February 2023 court date, respondent-mother was living in New York with her cousin, had not enrolled in an inpatient substance abuse program, but had a substance abuse assessment scheduled for 8 February 2023, which respondent-mother claimed she completed in January of 2023. By the February court date, Jerry was out of home for approximately 473 days.

After the hearing on the petition to terminate respondent-mother's parental rights, the trial court adjudicated the existence of two grounds to terminate—willfully leaving the child in foster care for more than twelve months and dependency. The termination of parental rights (“TPR”) order was reduced to writing and entered on 28 June 2023. Respondent-mother timely filed written notice of appeal. This Court has jurisdiction pursuant to N.C.G.S. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

II.

Our Juvenile Code provides for a two-stage process for the termination of parental rights: the adjudicatory stage and the dispositional stage. At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence the existence of one or more grounds for termination under section 7B-1111(a) of the General Statutes. 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. If the trial court determines that one or more grounds listed in section 7B-1111 are present, 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.

In re T.N.H., 372 N.C. 403, 406 (2019) (cleaned up).

III.

In reviewing the trial court’s TPR order, this Court need only establish that one ground adjudicated is substantiated by adequate findings of fact. *See In re E.H.P.*, 372 N.C. 388, 395 (2019) (“[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights.”); *see also* § 7B-1111(a). If any of the adjudicated grounds “is supported by findings of fact based on clear, cogent and convincing evidence, the orders appealed from should be affirmed.” *In re E.H.P.*, 372 N.C. at 392 (cleaned up).

We begin with respondent-mother’s challenge to the trial court’s determination that grounds exist to terminate her parental rights under N.C.G.S. § 7B-1111(a)(2)— “[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.G.S. § 7B-1111(a)(2) (2023).

Respondent-mother’s primary argument is that she completed substance abuse treatment, and to this effect, she contests six sub-findings of fact in paragraph 10 of the TPR order as unsupported by clear, cogent, and convincing evidence. Those challenged sub-findings are: iv., v. (the last sentence regarding her agreement to

complete a 12-month in-patient program), vii., viii., x., and xi. Respondent-mother does not contest paragraph 10—sub-findings of fact i., ii., iii., v, (up to her last sentence regarding her agreement to complete a 12-month inpatient program), vi., and ix.—all of which are deemed conclusive on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97 (1991) (Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.).

As a preliminary matter, respondent-mother asserts the beginning portions of findings of fact 10 (and 11) are actually conclusions of law.³ We agree that the court’s prefatory language in each of these findings—stating that respondent-mother’s acts and omissions meet the statutory grounds set forth under N.C.G.S. § 7B-1111(a)(2) and (a)(6), respectively, may be more appropriately characterized as conclusions of law. As such, “[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 a lower tribunal. *In re J.S.*, 374 N.C. 811, 818 (2020).

Turning now to the remaining findings of fact, we agree that the TPR order contains a few inaccuracies and statements that are unsupported by the evidence. We are, however, ultimately unpersuaded by respondent’s argument that the trial

³ Although finding of fact 10 addresses failure to make reasonable progress and finding of fact 11 concerns dependency, the subparts that make up these findings are nearly identical except for the inclusion of a subpart to address the date Jerry was removed to an out-of-home placement in finding of fact 10 and the addition of two subparts addressing appropriate childcare alternatives included in finding of fact 11.

court erred by adjudicating the existence of grounds pursuant to § 7B-1111(a)(2).

For example, findings of fact 10, subpart iv, and 11, subpart iii, state that “[i]n the [d]isposition order, . . . respondent[-]mother was ordered to complete a twelve-month program to address her substance abuse.” As respondent-mother correctly notes, this is “simply not true” because the 1 August 2022 disposition order “did not include any sort of mandate that required [respondent-mother] to address her substance abuse issues.” The district court noted in the disposition order, after recounting respondent-mother’s substance abuse issues and “attempted drug treatment” since the DSS case began, that she had begun a twelve-month inpatient program in New York in March 2022 and remained enrolled in that program at the time of the hearing. The trial court did not, however, order respondent-mother to continue that program or to undertake any other specific substance abuse treatment. Further, although respondent-mother concedes she was ordered to “continue to participate in substance abuse treatment” in a permanency planning order entered on 28 November 2022, to “enroll and successfully complete an inpatient rehabilitation program specializing in substance abuse” in a permanency planning order entered on 3 February 2023, and to “successfully address her substance abuse issues” in a permanency planning order entered on 3 April 2023, none of the orders specified a particular program for a specific length of time. Accordingly, finding of fact 10, subpart iv (and 11, subpart iii) is not supported by clear, cogent, and convincing evidence and will not be considered in determining whether the district court’s

conclusions of law are supported.

The quoted provisions in the above-cited permanency planning orders are also pertinent to our resolution of respondent-mother’s next contention: that findings of fact 10, subpart vi, and 11, subpart v—“*[t]hroughout permanency planning*, the [c]ourt ordered . . . respondent[-]mother to address substance abuse issues up to and including completion of the program at Hoving Home or something similar”—“is not *entirely* true” because the district court did not order respondent-mother to complete any substance abuse program in the August 2022 permanency planning order. In our view, the trial court’s repeated mandates that respondent-mother address her substance abuse in the permanency planning orders entered in November 2022, February 2023, and April 2023, can fairly be interpreted as being “*[t]hroughout permanency planning*.” Accordingly, we reject respondent-mother’s challenge to these subparts.

Respondent-mother also notes that the district court miscalculated the length of time she was participating in the Hoving House program. In findings of fact 10, subpart vii, and 11, subpart vi, the court found that respondent-mother left Hoving Home “after six months,” while the record indicates that respondent-mother was at Hoving Home from 4 March 2022 until 27 October 2022—a period of seven and three-quarter months. Thus, we disregard the “six months” portion of these subparts. But respondent-mother does not dispute the remainder of this factual finding—that she “failed to complete the twelve-month program” at Hoving Home.

Respondent-mother purports to challenge findings of fact 10, subpart viii, and 11, subpart, vii—“[t]he evidence before the [c]ourt contradicts [respondent-mother’s] testimony that she left the program at Hoving Home after the [c]ourt changed the plan to adoption.” Yet, she acknowledges that “the record speaks for itself: [respondent-mother] left Hoving Home on 27 October 2022 and the [district] court changed the primary permanency plan from guardianship to adoption at the second permanency planning hearing on 28 November 2022.” This argument is thus overruled.

Respondent-mother next takes issue with a portion of findings of fact 10, subpart x, and 11, subpart ix—that she “has failed to address her substance abuse issues since leaving Hoving Home.” Specifically, respondent-mother contends that she no longer had any substance abuse issues after she left the Hoving House program or, alternatively, that she has been addressing her substance abuse issues since leaving that program and that nothing in the record indicates that she “had used drugs since 1 February 2022.” The record shows, however, that after leaving the Hoving Home program in October 2022, respondent-mother appeared to be impaired during a video visit with Jerry on 26 November 2022 and was uncooperative with DSS efforts to assess her progress on her case plan such as: by submitting to required drug screens; completing a substance use assessment with DSS; or giving consent to have information about a substance abuse assessment she claimed to have completed in New York transmitted to DSS. Although respondent-mother testified

that she had not used drugs since the “[b]eginning of the year 2021,” she acknowledged that she was no longer engaged in substance abuse treatment despite the permanency planning orders requiring her to do so. It was for the district court to judge the credibility of the witnesses and to weigh the evidence before it on these issues. *See In re T.N.H.*, 372 N.C. at 411. The evidence before the district court certainly permitted an inference that respondent-mother continued to experience substance abuse issues and/or was not addressing those issues. We hold that these portions of findings of fact 10 and 11 are supported by clear, cogent, and convincing evidence.

Finally, respondent-mother argues finding of fact 10, subpart xi, “[t]hrough her actions and inactions, the respondent[-]mother has demonstrated and continues to demonstrate that she is unwilling and unable to provide for the care of her child. . . . [and] has failed to correct the situations that led to” Jerry being removed from respondent-mother’s care and placed in the custody of DSS, and finding of fact 11, subpart xi—that “respondent[-]mother does not have an appropriate child care alternative for” Jerry are conclusions of law. In our view, these excerpts from the order are better characterized as ultimate findings of fact, and accordingly, we consider whether they are supported by the court’s evidentiary findings of fact. *See In re G.C.*, 384 N.C. 62, 65 n.3 (2023) (citation and internal quotation marks omitted) (clarifying that “[u]ltimate facts are the final facts required to establish [a] cause of action or [a] defense” and thus, if challenged, are reviewed to ensure they are

“supported by other evidentiary facts reached by natural reasoning.”).

IV.

The main condition that led to Jerry’s placement in foster care was respondent-mother’s substance abuse. The progress required of her to correct the conditions, “which led to the removal of the juvenile[,]” was substance abuse treatment. The record is clear on this. Having reviewed respondent-mother’s specific challenges to portions of finding of fact 10, the trial court’s supported evidentiary findings (with the exception of subpart xi.) indicate:

[10](i). The juvenile has remained in out-of-home placement since [15 October 2021], when the Department took non-secure custody of the juvenile.

ii. On [5 May 2022], the juvenile was adjudicated dependent, and the Department was granted custody of the juvenile at disposition on [24 May 2022].

iii. The juvenile was removed from the respondent-mother’s care due to respondent mother’s substance abuse. During a home visit by social workers from the Department, the respondent mother overdosed on fentanyl. She was revived by CPR administered by a social worker.

...

v. In March 2022, the respondent mother entered a[n] inpatient substance abuse treatment program with Hoving Home and relocated to Hoving Home’s facility in New York. The respondent mother agreed to complete a twelve-month program at Hoving Home.

vi. Throughout permanency planning, the [c]ourt ordered the respondent mother to address substance abuse issues up to and including completion of the program at Hoving Home or something similar.

vii. The respondent mother failed to complete the twelve-month program at Hoving Home

viii. The evidence before the [c]ourt contradicts the respondent mother's testimony that she left the program at Hoving Home after the [c]ourt changed the plan to adoption. The [c]ourt changed the plan to adoption after the respondent mother failed to successfully complete the program.

ix. The [c]ourt continued to order the respondent mother to address her substance abuse issues after she left the program.

x. The respondent mother has failed to address her substance abuse issues since leaving Hoving Home.

xi. Through her actions and inactions, the respondent mother has demonstrated and continues to demonstrate that she is unwilling and unable to provide for the care of her child. The respondent mother has failed to correct the situations that led to the juvenile being placed in the Department's custody.

Respondent-mother's factual challenges do not eliminate the trial court's factual basis for adjudicating the existence of grounds necessary to terminate her parental rights under N.C.G.S. § 7B-1111(a)(2).

[T]his ground requires the trial court to determine 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 (2013) (citation omitted).

First, there is no dispute that Jerry was willfully left in placement for over twelve months. Jerry was removed from respondent-mother on 15 October 2021 and

remained in care at the time DDS filed the TPR petition on 10 February 2023.

Turning to the reasonable-progress prong, respondent-mother concedes she was ordered to “successfully address her substance abuse issues.” The trial court ordered respondent mother, no later than 3 October 2022, to complete substance abuse treatment—she did not. Respondent suggests she no longer had any substance abuse issues after leaving Hoving Home, and in any event, treated them herself in New York. She relies on her own testimony to support her contention that “nothing in the record indicates [she] had used drugs since 1 February 2022.” Yet numerous findings throughout the adjudication, disposition, permanency planning, and TPR processes document her long history of substance abuse issues, and the record also flatly contradicts her claim that she had not used drugs since 1 February 2022. The record shows: respondent-mother prematurely left her Hoving Home substance abuse treatment program against her counselors’ advice; largely ignored her social worker after leaving treatment; missed multiple calls “from the pre-established arrangement” with the foster family; did “not compl[y] with her case plan[;]” did “not respond[] to communications from the social worker[;]” refused a request for a random drug screening on 15 November 2022; and “appeared to be under the influence of an impairing substance on a [November 2022] video call.”

Despite respondent’s alternative view of the facts, “a trial court has ample authority to determine that a parent’s ‘extremely limited progress’ in correcting the conditions leading to removal adequately supports a determination that a parent’s

parental rights in a particular child are subject to termination pursuant to N.C.G.S. § 7B-1111(a)(2)[.]” *In re B.O.A.*, 372 N.C. 372, 385 (2019); *see, e.g., In re J.S.*, 374 N.C. at 819 (affirming adjudication under N.C.G.S. § 7B-1111(a)(2) despite the respondent’s completion of some case plan requirements where she “failed to make meaningful progress in improving the conditions of her home.”); *In re S.N.*, 194 N.C. App. 142, 149 (2008) (determining that “there was sufficient evidence to support the trial court’s finding that [the] respondent’s extremely limited progress was not reasonable progress[.]” under § 7B-1111(a)(2).), *aff’d*, 363 N.C. 368 (2009). Clear, cogent, and convincing record evidence supports the trial court’s findings that respondent-mother failed to make reasonable progress regarding her substance abuse treatment, and thus, the findings support a conclusion that respondent failed to make “reasonable progress under the circumstances . . . in correcting those conditions which led to the removal of the juvenile.” § 7B-1111(a)(2).

V.

Having determined that the trial court’s factual findings “support the conclusion that respondent failed to make reasonable progress on her substance abuse issue[,] which ‘was the core cause of the circumstances’ that led to the child’s removal from respondent’s care, we affirm.” *In re A.B.C.*, 374 N.C. 752, 759 (2020). “Because only one ground is required to terminate parental rights, it is unnecessary to address respondent’s arguments concerning the other ground[] for termination found by the court[.]”—dependency. *In re L.C.R.*, 226 N.C. App. at 252 (citation

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omitted). The trial court's best interests determination in the dispositional portion of the TPR order is not challenged on appeal, and thus, merits no further discussion.

AFFIRMED.

Judges HAMPSON and FLOOD concur.

Report per Rule 30(e).