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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-82

Filed 18 June 2024

Henderson County, No. 21 JT 83

In the Matter of:

D.J.N.,

Juvenile.

Appeal by respondent-mother from order entered 18 October 2023 by Judge Abe Hudson in Henderson County District Court. Heard in the Court of Appeals 28 May 2024.

Deputy County Attorney Sara Player for petitioner-appellee Henderson County Department of Social Services.

Troutman Pepper Hamilton Sanders LLP, by Mary K. Grob, for guardian ad litem.

Hooks Law, P.C., by Laura G. Hooks, for respondent-appellant mother.

ZACHARY, Judge.

Respondent-Mother appeals from the trial court's order terminating her

parental rights to her minor child, “Danny.”¹ After careful review, we affirm.

I. Background

Respondent-Mother is the biological mother of Danny, who was born in California in 2016. Danny’s biological father has not been determined; Respondent-Mother identified two putative fathers, but the one who submitted to a paternity test was excluded by the result. Respondent-Mother’s family has a history of domestic violence, neglect, substance abuse, and family involvement with social services. Respondent-Mother had her parental rights to three of her other children terminated in California. In June 2021, Respondent-Mother and Danny left California to avoid a domestic-violence situation, and arrived in North Carolina.

After receiving a report concerning the family, Henderson County Department of Social Services (“DSS”) requested and obtained nonsecure custody of Danny in the evening of 9 August 2021. The next morning, DSS filed a juvenile petition alleging that Danny was a neglected and dependent juvenile. The trial court repeatedly continued the matter, as questions regarding Danny’s history with social services in California and his potential tribal affiliations were investigated. The matter ultimately came on for adjudication and disposition hearings on 13 January 2022.

On 8 February 2022, the trial court entered an adjudication order, in which it adjudicated Danny as a neglected and dependent juvenile. That same day, the trial

¹ We use the pseudonym adopted by the parties for ease of reading and to protect the juvenile’s identity.

court also entered its disposition order, in which the court determined that maintaining Danny's placement with DSS was in Danny's best interests. In these orders, the trial court found multiple "issues concerning the welfare of [Danny]" that Respondent-Mother needed to address:

- i. issues of the use of alcohol and/or controlled or illegal substances by a parent or caregiver.
- ii. issues concerning the mental health of a parent and/or caregiver.
- iii. issues involving management of anger and/or domestic violence by or against a parent and/or caregiver.
- iv. issues involving the stability of day-to-day life involving a parent and/or caregiver.
- v. issues involving the knowledge of or ability to carry out appropriate acts of parenting by a parent and/or caregiver.
- vi. issues involving the welfare and provision for [Danny].
- vii. issues involving [Danny]'s general care and supervision.

In order to address these issues, the trial court "place[d] . . . requirements on" Respondent-Mother for her to achieve reunification with Danny. These prerequisites included, *inter alia*: (1) obtaining and completing all the recommendations of a comprehensive clinical assessment; (2) submitting to random drug screens; (3) completing anger management, domestic violence, and parenting classes; and (4) working with Danny's therapist and other providers.

Three permanency planning hearings were held over the course of the next year. Following the 23 March 2023 permanency planning hearing, the trial court found that Respondent-Mother “had not made reasonable progress towards completion of her reunification plan.” Consequently, the trial court determined that “the primary plan for [Danny] should be changed to adoption[,]” with a secondary plan of guardianship with an appropriate adult.

On 7 June 2023, DSS filed a motion in the cause for the termination of Respondent-Mother’s rights to Danny. DSS alleged that Respondent-Mother’s parental rights should be terminated on the grounds that she had (1) neglected Danny, and (2) willfully left Danny in foster care or placement outside the home for more than 12 months without showing that she made reasonable progress under the circumstances in correcting those conditions that led to Danny’s removal. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(2) (2023).

On 17 August 2023, the matter came on for hearing. On 18 October 2023, the trial court entered an order terminating Respondent-Mother’s parental rights. The trial court concluded, *inter alia*, that both asserted grounds for terminating Respondent-Mother’s parental rights existed. Respondent-Mother filed timely notice of appeal.

II. Discussion

On appeal, Respondent-Mother first argues that the trial court lacked subject-matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement

Act (“UCCJEA”). She then argues that the trial court erred by concluding that grounds existed to terminate her parental rights, and by concluding that termination of her parental rights was in Danny’s best interest.

A. Subject-Matter Jurisdiction

Respondent-Mother contends that the trial court “lacked subject[-]matter jurisdiction at the commencement of the proceeding when California was Danny’s home state.” We disagree.

1. Standard of Review

“Subject-matter jurisdiction . . . is a threshold requirement for a court to hear and adjudicate a controversy brought before it” *In re N.B.*, 289 N.C. App. 525, 528, 890 S.E.2d 199, 201 (2023) (cleaned up). “Whether a court possesses subject-matter jurisdiction is a question of law, which this Court reviews de novo on appeal.” *Id.* at 528, 890 S.E.2d at 201–02. “When conducting de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court.” *Id.* at 528, 890 S.E.2d at 202 (cleaned up).

Although our review of this issue is de novo, our appellate courts presume that “the trial court has properly exercised jurisdiction unless the party challenging jurisdiction meets its burden of showing otherwise.” *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020). Additionally, unchallenged findings of fact are binding on appeal. *In re N.T.U.*, 234 N.C. App. 722, 733, 760 S.E.2d 49, 57, *disc. review denied*, 367 N.C. 826, 763 S.E.2d 517 (2014).

2. Analysis

Respondent-Mother alleges that the trial court “lacked subject[-]matter jurisdiction at the commencement of the proceeding when California was Danny’s home state.” However, she fails to rebut the presumption that “the trial court . . . properly exercised jurisdiction” when entering the termination order from which she appeals. *L.T.*, 374 N.C. at 569, 843 S.E.2d at 200.

“The jurisdictional statute governing actions to terminate parental rights is N.C. Gen. Stat. § 7B-1101” *N.T.U.*, 234 N.C. App. at 724–25, 760 S.E.2d at 52. Section 7B-1101 provides, in pertinent part:

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. *Provided, that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204.*

N.C. Gen. Stat. § 7B-1101 (emphasis added).

It is well settled that “a termination order rests on its own merits.” *In re E.X.J.*, 191 N.C. App. 34, 45, 662 S.E.2d 24, 30 (2008) (citation omitted), *aff’d*, 363 N.C. 9, 672 S.E.2d 19 (2009). “Motions in the cause and original petitions for termination of parental rights may be sustained *irrespective* of earlier juvenile court activity.” *Id.*

(citation omitted). Further, the appellate record reflects that Respondent-Mother did not appeal either the adjudication or disposition orders. Accordingly, we focus our analysis on the trial court's jurisdiction over the termination proceedings as provided for by the UCCJEA and § 7B-1101.

In the termination order from which Respondent-Mother appeals, the trial court found as fact that “[t]his action was not filed to circumvent the provisions of Chapter 50A of the North Carolina General Statutes, and there is no other proceeding pending in any other jurisdiction affecting the issue of custody or support of this minor juvenile.” Respondent-Mother does not specifically challenge this finding of fact, which supports the trial court's exercise of subject-matter jurisdiction, and therefore, this finding is binding on appeal. *N.T.U.*, 234 N.C. App. at 733, 760 S.E.2d at 57.

Rather, Respondent-Mother contends that the trial court failed to make certain findings of fact to support the exercise of its subject-matter jurisdiction over the adjudication and disposition orders preceding the termination order in this matter. Yet Respondent-Mother acknowledges that “[t]he trial court is not required to make specific findings of fact demonstrating its jurisdiction under the UCCJEA[.]” *L.T.*, 374 N.C. at 569, 843 S.E.2d at 200. Instead, our Supreme Court has explained that the record only “must reflect that the jurisdictional prerequisites in the [UCCJEA] were satisfied when the [trial] court exercised jurisdiction.” *Id.* at 569, 843 S.E.2d at 201. Nonetheless, Respondent-Mother does not argue that “the jurisdictional

prerequisites in the [UCCJEA] were [not] satisfied when the [trial] court exercised jurisdiction” over the termination proceedings. *Id.*

To the contrary, Respondent-Mother’s challenge to the termination order in this case is based upon alleged infirmities in the trial court’s jurisdictional findings of fact in the preceding adjudication order. Respondent-Mother specifically asserts that “[i]t was not affirmatively stated that there was never a custody action involving Danny in California” and that “[t]he adjudication order did not provide that it was a final order satisfying all jurisdictional inquires.” These critiques arise from the provisions of § 50A-204(b), which must be satisfied for a trial court’s temporary emergency jurisdiction to ripen into home-state jurisdiction:

If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

N.C. Gen. Stat. § 50A-204(b).

However, Respondent-Mother does not allege that a child-custody proceeding concerning Danny had been commenced or was proceeding in California in the exercise of its home-state jurisdiction under the UCCJEA. Respondent-Mother merely attacks the lack of certain jurisdictional findings of fact in the preceding adjudication order, which is not the order from which she appeals. This argument is not only without merit on its own terms, but it is also misguided in its implied

assumption that the trial court needed to possess home-state jurisdiction under the UCCJEA in order to terminate Respondent-Mother's parental rights.

Respondent-Mother does not dispute that the trial court properly exercised temporary emergency jurisdiction at the commencement of the adjudication proceedings. Rather, she seems to assume that a trial court exercising temporary emergency jurisdiction may not enter an adjudication, disposition, or termination order, despite the suggestion in our precedents that there is no such infirmity to entry of an adjudication or disposition order by a trial court properly exercising jurisdiction under § 50A-204. *See N.T.U.*, 234 N.C. App. at 724, 760 S.E.2d at 52 (“In its [adjudication] order, the trial court once again found that although South Carolina was [the juvenile]’s home state, the trial court had temporary emergency jurisdiction under the UCCJEA.”); *see also E.X.J.*, 191 N.C. App. at 39–40, 662 S.E.2d at 27 (concluding that unchallenged findings of fact in adjudication and termination orders “establish[ed] a basis for emergency jurisdiction”).

Indeed, the plain text of § 7B-1101 contemplates that a trial court may terminate the rights of a parent residing in North Carolina while exercising temporary emergency jurisdiction. Unlike termination actions involving nonresident parents—over which the trial court must find that it has jurisdiction “without regard to [§] 50A-204”—section 7B-1101 explicitly provides that before a trial court exercises jurisdiction to terminate a resident’s parental rights, “the court shall find that it has jurisdiction to make a child-custody determination under the provisions of [§§] 50A-

201, 50A-203, or 50A-204.” N.C. Gen. Stat. § 7B-1101 (emphasis added). Consequently, we need not address Respondent-Mother’s contention that the trial court did not properly exercise home-state jurisdiction before DSS filed the termination motion.

In sum: it is undisputed that the trial court properly exercised temporary emergency jurisdiction at the commencement of the proceedings, that Respondent-Mother resided in North Carolina at the time of the filing of the termination motion in this matter, and that the plain language of § 7B-1101 allows a trial court exercising temporary emergency jurisdiction to terminate a resident’s parental rights. Ultimately, Respondent-Mother is unable to rebut the presumption that the trial court properly exercised its jurisdiction, especially in light of the unchallenged finding of fact “reflect[ing] that the jurisdictional prerequisites in the [UCCJEA] were satisfied when the [trial] court exercised jurisdiction” over the termination proceeding. *L.T.*, 374 N.C. at 569, 843 S.E.2d at 201. Respondent-Mother thus fails to carry her burden on appeal, and her argument is overruled.

B. Grounds for Termination

Respondent-Mother next challenges the trial court’s conclusions of law that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)–(2).

1. Standard of Review

“This Court reviews a trial court’s decision to terminate parental rights by

examining 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 K.M.C.*, 288 N.C. App. 143, 150, 884 S.E.2d 775, 779 (2023) (cleaned up). “Any unchallenged findings are deemed supported by competent evidence and are binding on appeal. The trial court’s conclusions of law are reviewed de novo.” *Id.* at 150, 884 S.E.2d at 779–80 (citation omitted).

2. Analysis

“Because the determination of the existence of any statutory ground which is duly supported is sufficient to sustain a termination order, we elect to review the trial court’s adjudication under [N.C. Gen. Stat.] § 7B-1111(a)(2)” *In re B.J.H.*, 378 N.C. 524, 529, 862 S.E.2d 784, 791 (2021). Under § 7B-1111(a)(2), a trial court may terminate parental rights if a 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).

Our Supreme Court has explained that this ground for termination “requires that a child be left in foster care or placement outside the home pursuant to a court order for more than a year at the time the petition to terminate parental rights is filed.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (cleaned up). “This is in contrast to the nature and extent of the parent’s *reasonable progress*, which is

evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights.” *Id.* (citation omitted).

Respondent-Mother challenges several of the trial court’s findings of fact and argues that the trial court erred by “concluding that [she] willfully left Danny in foster care without showing reasonable progress.” However, even excluding those findings of fact that Respondent-Mother challenges, the unchallenged findings of fact sufficiently demonstrate that Respondent-Mother failed to correct the conditions which led to Danny’s removal in several ways. For example, the trial court found that Respondent-Mother failed to: follow the recommendations contained in her comprehensive clinical assessment, complete any substance abuse program, submit to required drug screens, or maintain communication and engagement with Danny’s therapist.

These unchallenged findings of fact are binding on appeal. *K.M.C.*, 288 N.C. App. at 150, 884 S.E.2d at 779–80. Further, the unchallenged findings of fact amply demonstrate that Respondent-Mother made limited progress in her case plan and in remedying the conditions that led to Danny’s removal over the span of more than 24 months since DSS obtained custody of Danny. *See B.J.H.*, 378 N.C. at 541, 862 S.E.2d at 798. Respondent-Mother’s “limited progress over such an extended period supports a conclusion that she willfully failed to make reasonable progress” pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). *Id.* (cleaned up).

Respondent-Mother responds that she “complied with aspects of her case plan.”

Be that as it may, the completion of a portion of a case plan does not preclude a conclusion of willful failure to make reasonable progress. “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 under section 7B-1111(a)(2).” *J.S.*, 374 N.C. at 815, 845 S.E.2d at 71 (emphasis added) (cleaned up). Respondent-Mother is unable to show that the trial court erred by terminating her parental rights to Danny on this ground.

C. Best Interest Determination

Lastly, Respondent-Mother argues that “[t]he trial court abused its discretion at disposition by concluding it was in Danny’s best interest to terminate [her] parental rights.” We disagree.

1. Standard of Review

“We review the trial court’s dispositional findings of fact to determine whether they are supported by the evidence received during the termination hearing, with a reviewing court being bound by all uncontested dispositional findings.” *In re S.C.C.*, 379 N.C. 303, 313, 864 S.E.2d 521, 528 (cleaned up), *reh’g denied*, 379 N.C. 691, ___ S.E.2d ___ (2021). “The trial court’s assessment of a juvenile’s best interests at the dispositional stage is reviewed for abuse of discretion.” *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019). “Under this standard, we defer to the trial court’s decision unless it is manifestly unsupported by reason or [is] so arbitrary that it could

not have been the result of a reasoned decision.” *In re J.J.B.*, 374 N.C. 787, 791, 845 S.E.2d 1, 4 (2020) (cleaned up).

2. Analysis

Respondent-Mother does not challenge any of the trial court’s dispositional findings of fact, which are therefore binding on appeal. *S.C.C.*, 379 N.C. at 313, 864 S.E.2d at 528. These findings of fact include:

3. The likelihood of [Danny]’s adoption is very high. He is currently in a pre-adoptive placement and is doing well there.

. . . .

5. [Danny] does not demonstrate a strong bond with his mother. He does not ask about her. He sometimes gets upset when [Respondent-Mother] misses a scheduled visit, but when he does visit with her, he prefers to end the visits early.

6. [Respondent-Mother] has only had supervised contact with [Danny] since he came into HCDSS custody [on] August 9, 2021.

7. [Danny] is bonded with his foster father and the two have a very good relationship. [Danny] says he feels safe in the foster home and likes living there. He is doing well in the home, and has maintained the behavioral and emotional progress he made in his therapeutic placements.

8. The foster father is able to provide a safe, stable home for [Danny] and meet [Danny]’s needs.

Rather than challenge these findings, Respondent-Mother argues that the trial court nevertheless abused its discretion because “a finding that . . . children are well settled in their new family unit . . . does not alone support a finding that it is in the

best interest of the children to terminate [the] respondent's parental rights." *Bost v. Van Nortwick*, 117 N.C. App. 1, 8, 449 S.E.2d 911, 915 (1994), *appeal dismissed*, 340 N.C. 109, 458 S.E.2d 183 (1995). However, the unchallenged findings of fact in this case are not so meager as she contends, and support the trial court's conclusion.

Based on these binding findings of fact, and without a compelling argument otherwise, we cannot say that the trial court's decision was "manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *J.J.B.*, 374 N.C. at 791, 845 S.E.2d at 4 (citations omitted). Accordingly, the trial court did not abuse its discretion by concluding that termination of Respondent-Mother's parental rights was in Danny's best interests, and Respondent-Mother's argument is overruled.

III. Conclusion

For the foregoing reasons, the trial court's order terminating Respondent-Mother's parental rights to Danny is affirmed.

AFFIRMED.

Judge STADING concurs.

Judge COLLINS concurs in result only.

Report per Rule 30(e).