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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-73

Filed 3 December 2024

Wake County, Nos. 17 JA 10-14

IN THE MATTER OF: J.G.C., J.F.C., J.H.C., J.E.C., J.J.C.

Appeal by Respondent-Mother from an order entered 2 August 2023 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 21 November 2024.

Wake County Attorney's Office, by Mary Boyce Wells, for Wake County Health and Human Services, Petitioner-Appellee.

Matthew D. Wunsche for the Guardian ad Litem.

BJK Legal, by Benjamin J. Kull, for Respondent-Appellant Mother.

WOOD, Judge.

Respondent-mother ("Mother") appeals the trial court's order terminating her parental rights to J.G.C. ("Jane"), J.F.C. ("Janette"), J.H.C. ("Jimmy"), J.E.C.

(“Jack”), and J.J.C. (“Jene”) on 2 August 2023.^{1,2} We affirm the trial court’s order.

I. Background

Wake County Health and Human Services (“WCHS”) filed a juvenile petition in Wake County District Court on 12 January 2017 alleging Jane, Janette, Jimmy, Jack, Jene, and “Julia”³ were neglected juveniles. WCHS had received numerous reports about the children’s exposure to domestic violence between respondent-parents and WCHS’ involvement and family court had not decreased the conflicts.

On 4 April 2017, Mother signed a Consent Order on Adjudication and Disposition, which concluded the children were neglected juveniles. The trial court awarded custody of the children to WCHS and ordered them to continue to make reasonable efforts to eliminate the need for placement outside of the home. Mother was ordered to enter into a case plan, including: participate in the UNC Parent Evaluation Program; follow all recommendations of a substance abuse assessment, including random drug screens and a hair follicle drug screen; complete the MOVE program and demonstrate learned skills; maintain employment/income suitable to meet the needs of herself and her children; resolve all pending criminal charges and

¹ Respondent-father is not a party to the appeal.

² A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

³ “Julia” had attained eighteen years of age at the time WCHS filed its petition to terminate respondent’s parental rights and was not named in the petition to terminate parental rights.

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refrain from further criminal activity; and maintain contact with WCHS. The trial court awarded Mother supervised visitation for a minimum of two hours per week.

In a permanency planning hearing conducted on 1 August 2017, the trial court found Mother had completed a psychological evaluation and had been recommended to continue with trauma-focused counseling services incorporating Dialectical Behavioral Therapy (“DBT”). The trial court ordered Mother to have supervised visitation for a minimum of two hours bi-weekly. The trial court also found Father had remarried, had stable housing in West Virginia, and could provide appropriate care and supervision in a safe home.

Julia, Jene, Jack, Jimmy, Janette, and Jane were in a trial placement with Father by 16 September 2017. At the review and permanency planning hearing conducted on 23 January 2018, the guardian *ad litem* reported in October 2017 Jene and Jack had made claims that Mother had sexually abused them. On 6 February 2018, the trial court suspended visitation with Mother until further order of the court. The trial court ordered a child medical evaluation (“CME”) for each child. The CME results were to be confirmed by an investigating agency (the Chatham County Department of Social Services (“Chatham County DSS”)). The trial court set a primary permanent plan of reunification and a secondary plan of guardianship for the children.

In a permanency planning order entered on 26 April 2018, the trial court found the allegations of sexual abuse were unsubstantiated. The trial court deemed it

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appropriate for Mother to resume visitations with the three youngest children, while the oldest children were to engage in therapy to prepare them for resuming visitations with Mother.

During a 15 August 2018 hearing, WCHS and the guardian *ad litem* reported no concerns with the children in their placement with Father. However, since visitations with Mother had resumed, the children had begun exhibiting severe separation anxiety from their stepmother, sexual behaviors, hair pulling, regression in therapy, nightmares, feelings of anger, urination and defecation in the household, and adjustment disorder and anxiety. In its 24 September 2018 review and permanency planning order, the trial court again suspended visitation with Mother until further order of the court.

At the time the trial court entered its 31 January 2019 permanency planning order, the children had been in placement with Father for over a year. The trial court found the children were progressing well, the primary permanent plan of reunification had been achieved, and permanence had been established. The trial court determined it was in the best interests of the children to restore full legal and physical custody to Father. The trial court granted Father sole legal and physical custody of the children, relieved WCHS of any more involvement in the case, and released the guardian *ad litem*.

The trial court also found the children were having issues, including regression, correlating with the resumption of visitation with Mother. The trial court

ordered that no visitation should occur until the children had undergone at least six months of therapy with their new therapists, the therapists agreed to the visitations, and the visitations occurred in West Virginia under the supervision of the children's therapists.

The trial court also ordered Mother to continue her own therapy. Visitations with Mother would remain suspended until further order of the court or as determined by Father, after the court-imposed conditions were met. Mother appealed the 31 January 2019 juvenile order and on 17 March 2020 this Court affirmed the order. *See In re J.C.*, 270 N.C. App. 638, 838 S.E.2d 696 (2020), 2020 WL 1275310 (N.C. Ct. App. Mar. 12, 2020) (unpublished).

In March 2019 Father separated from his wife in West Virginia and returned to North Carolina with the children. On 7 June 2019, WCHS filed a juvenile petition in Wake County District Court alleging the children were neglected and dependent juveniles. WCHS alleged that Father had used inappropriate discipline placing the children at serious risk of harm. The same day, the trial court granted WCHS nonsecure custody.

On 16 August 2019, Mother and Father signed a consent adjudication and disposition order concluding that the children were neglected and dependent juveniles. As to Mother, the trial court found the children are "very vocal about their aversion to visiting with or having interaction" with her. The trial court ordered the children to remain in WCHS' custody; Mother to enter into a case plan requiring a

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visitation agreement; to maintain housing and employment; to follow the recommendations of her previous Parent Evaluation Program; to follow the recommendations of her previous psychological evaluation, “[c]ontinue counseling services with her therapist or another therapist skill[ed] in DBT therapy and demonstrate learned skills during her visits with the children (when reinstated),” as well as maintain regular contact with the WCHS social worker. Parental visits with the children remained suspended at this time.

In a review order entered on 3 December 2019, the court found that

[n]one of the children wish to visit with their mother. The children are all receiving therapy services and many of the protocols being used require the avoidance of interactions with person[s] thought to be perpetrators. The mother falls into this category. None of the children’s therapists have recommended resuming visits with the mother.

Following the 29 May 2020 hearing, the trial court entered an order on 24 August 2020 in which it found Mother had not engaged in her case plan to the extent necessary to provide a safe home for the children and it was in the best interests of the children to have no visitation with Mother. The trial court set the primary permanent plan as adoption and the secondary permanent plan as reunification. The trial court further ordered WCHS was “no longer relieved of the obligation to pursu[e] the termination of the parental rights.”

On 13 October 2020, WCHS filed a Motion for Termination of Parental Rights of Mother and Father as to all six children. Father filed an answer to the Motion for

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Termination of Parental Rights 28 October 2020. Based on the record no further action was taken by WCHS or by the trial court regarding the motion. On 18 November 2020 a permanency planning hearing took place, and the trial court again ordered “Wake County Human Services shall take the necessary steps to pursue the permanent plans described within this Order and is no longer relieved of the obligation to pursu[e] the termination of the parental rights.”

Following a permanency planning hearing which took place on 5, 7, and 18 May 2021, the trial court entered an order on 5 August 2021 in which it found that Jack had started participating in EMDR—a trauma-focused therapy—and had disclosed new details of past events. As a result, a new CPS report was generated to include the newly disclosed details of past events. The trial court continued the suspension of Mother’s visitation.

In an order entered on 15 November 2021, following a 15 October 2021 hearing, the trial court found Jene, Jimmy, and Jack had participated in CMEs on 21 July 2021. A summary of Jack’s CME statement described Mother performing sexual acts with him on two occasions and being struck by Mother’s boyfriend. Jene’s statement provided she wanted to be emancipated, and Mother was the only parent who had supported the decision. Jene expressed concern over hurting their brother by not speaking about what had happened, but she needed Mother’s help to be emancipated. Nevertheless, they would never be able to forgive Mother for what she had done to them and their brother. Jimmy became oppositional during the CME, and the

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interview was concluded. The trial court found the children's disclosures during CME were consistent with what they testified to in the trial court and found "[the] disclosures to be credible." The Raleigh Police Department continued to investigate the allegations. The trial court ordered that contact between Mother and Jene would occur "*exclusively*" in a therapeutic setting and visitation with the remaining children would remain suspended.

Father voluntarily relinquished his parental rights to the children on 9 March 2022.

In an order entered on 12 July 2022, following a 23 May 2022 hearing, the trial court changed the primary plan for Jene to guardianship, while the primary plan for Jack, Jimmy, Janette, and Jane remained adoption and the secondary plan remained reunification.

WCHS filed a petition to terminate Mother's parental rights to Jane, Janette, Jimmy, Jack, and Jene on 14 October 2022⁴. WCHS alleged Mother had neglected her children as contemplated under N.C. Gen. Stat. § 7B-1111(a)(1); Mother had left the children in foster care for more than twelve months without showing reasonable progress in correcting the conditions which led to their removal, invoking N.C. Gen. Stat. § 7B-1111(a)(2); and Mother had failed to pay a reasonable portion of the cost of

⁴ WCHS filed a prior Motion for Termination of Parental Rights on 28 October 2020 which had not been adjudicated, and it appears from the record, not dismissed.

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care for the children for a continuous period of six months preceding the filing of the petition as described under N.C. Gen. Stat. § 7B-1111(a)(3).

The trial court heard the petition to terminate Mother's parental rights on 2 and 3 February, 23 March, and 26 April 2023. On 2 August 2023, the trial court entered an order terminating Mother's parental rights to the juveniles in accordance with N.C. Gen. Stat. § 7B-1111(a)(1) and (2) after having concluded it was in the children's best interests to do so. Mother appeals.

II. Analysis

Mother argues the trial court's order terminating her parental rights must be reversed because the WCHS petition failed to comply with N.C. Gen. Stat. § 7B-1104(6) and has constitutional implications, or alternatively, because Mother received ineffective assistance of counsel.

A. Petition to Terminate Parental Rights

Mother argues WCHS' petition to terminate her parental rights failed to give notice of the factual allegations made in support of the claims for adjudicating a termination of parental rights, which is both a violation of N.C. Gen. Stat. § 7B-1104(6), as well as a constitutional issue.

We first consider whether Mother's arguments are properly before this Court. Generally, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion." N.C.R. App. P. 10(a)(1). Mother does not contend that trial counsel preserved the challenge to

WCHS’ petition by request, objection, or motion before the trial court. Rather, Mother contends WCHS’ petition to terminate parental rights failed to comply with the statutory mandate under N.C. Gen. Stat. § 7B-1104(6) and is preserved as an exception under N.C.R. App. P. 10(a)(1). We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1104(6), a petition or motion to terminate parental rights must state “[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.” N.C. Gen. Stat. § 7B-1104(6) (2023). “[W]hile there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue.” *In re B.C.B.*, 374 N.C. 32, 34, 839 S.E.2d 748, 751 (2020) (cleaned up).

In the case of *In re H.L.A.D.*, the respondent argued on appeal the petition to terminate parental rights “failed to allege sufficient facts as required by N.C. Gen. Stat. § 7B–1104(6) to warrant a determination that grounds existed to terminate [the respondent’s] parental rights.” *In re H.L.A.D.*, 184 N.C. App. 381, 392, 646 S.E.2d 425, 433 (2007), *aff’d per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008). This Court stated, and our Supreme Court affirmed, the Rules of Civil Procedure applied to the proceeding and that the “motion may not be made for the first time on appeal.” *In re H.L.A.D.*, 184 N.C. App. at 392, 646 S.E.2d at 434. This Court did not consider the merits of the challenge. *Id.* Additionally, our Supreme Court has long held “[c]onstitutional issues not raised and passed upon by the trial court will not be

considered for the first time on appeal.” *Woodcock v. Cumberland Cnty Hosp. Sys., Inc.* 384 N.C. 171, 179, 884 S.E.2d 633, 638 (2023) (cleaned up), *see also In re S.C.R.*, 198 N.C. App. 525, 530, 679 S.E.2d 905, 908 (2009).

At the pre-trial and termination hearings, Mother never argued to the trial court that the petition must be dismissed because it had failed to set forth sufficient facts to state a ground for termination, although the trial court again gave her the opportunity to do so. Mother raises her challenge to the sufficiency of WCHS’ petition to provide notice of the factual allegations supporting the statutory grounds for termination of parental rights, as required by N.C. Gen. Stat. § 7B-1104(6), as well as related constitutional concerns, for the first time on appeal. In accordance with our Supreme Court precedent, we hold Mother waived this argument by failing to raise it before the trial court.

B. Ineffective Assistance of Counsel

Alternatively, Mother argues that she suffered ineffective assistance of counsel compelling a reversal of the trial court’s order terminating parental rights. Mother contends her trial counsel had no strategic reason not to challenge WCHS’ petition for the lack of case-specific factual allegations as a violation of N.C. Gen. Stat. § 7B-1104(6) and the outcome of the termination proceeding would have been different had the trial court been so moved. We disagree.

Our Supreme Court has explained,

[p]arents have a right to counsel in all proceedings

dedicated to the termination of parental rights. Counsel necessarily must provide effective assistance, as the alternative would render any statutory right to counsel potentially meaningless. To prevail on a claim of ineffective assistance of counsel, respondent must show that counsel's performance was deficient and the deficiency was so serious as to deprive him of a fair hearing. To make the latter showing, the respondent must prove that there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings.

In re B.S., 378 N.C. 1, 5, 859 S.E.2d 159, 162 (2021) (cleaned up). We first consider whether Mother's counsel's performance was deficient; then determine whether there is a reasonable probability the outcome of the proceeding would have been different had counsel challenged the sufficiency of WCHS' petition for termination of parental rights.

1. Counsel's performance

Pursuant to General Statutes, section 7B-1104(6), a petition or motion to terminate parental rights must state "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6) (2023). "[W]hile there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." *In re B.C.B.*, 374 N.C. 32, 34, 839 S.E.2d 748, 751 (2020) (cleaned up). "A petition which sets forth only a bare recitation . . . of the alleged statutory grounds for termination does not meet this standard." *In re J.S.K.*, 256 N.C. App. 702, 705, 807 S.E.2d 188, 190 (2017) (cleaned up). In WCHS'

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petition for termination of parental rights, the alleged bases for termination mirror the statutory language of N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (3). Specifically, WCHS' petition stated

[t]hat there are facts sufficient to warrant a determination that grounds exist for the termination of parental rights, said grounds as follows:

a. That the mother neglected the children within the meaning of N.C.G.S. § 7B-101(15), and it is probable that there would be a repetition of the neglect if the children were returned to the care of the mother.

b. That the mother willfully left the children in foster care for more than twelve (12) months without showing to the satisfaction of the [c]ourt that reasonable progress under the circumstances has been made in correcting the conditions which led to the removal of the children. Poverty is not the sole reason that the mother is unable to care for the children.

c. That the children have been placed in the custody of the Movant and the parents, for a continuous period of six (6) months next preceding the filing of this Motion, have willfully failed for such period to pay a reasonable portion of the cost of care for the children although physically and financially able to do so.

This Court has long recognized a bare recitation of alleged statutory grounds in a petition for termination of parental rights can be supported by reference to an attachment providing “sufficient facts to warrant a determination” of parental rights. *In re Quevedo*, 106 N.C. App. 574, 579, 419 S.E.2d 158, 160 (1992).

Mother points us to *In re J.S.K.* in support of her argument. In the case of *In re J.S.K.*, the respondent moved to dismiss the motion to terminate her parental rights at the start of the termination hearing “arguing that the motion merely recited

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the statutory grounds without alleging any specific facts.” *In re J.S.K.* at 704, 807 S.E.2d at 189. While this Court reversed, the Court noted the motion “did not incorporate any prior orders” or attachments containing “additional facts sufficient to warrant a determination that grounds existed to terminate [the respondent’s] parental rights” reaffirming the contention attachments clearly suffice to support a petition for termination. *Id.* at 707, 807 S.E.2d at 191.

Here, in addition to reciting the statutory language as grounds for termination, the petition also incorporates *fourteen* prior court orders by reference, which set forth sufficient grounds to support the termination of Mother’s parental rights to her minor children.

Mother argues that the prior court orders are referenced to satisfy statutory criteria other than element six under N.C. Gen. Stat. § 7B-1104 and are not relevant for purposes of satisfying element six. N.C. Gen. Stat. § 7B-1104(6)(2023). We disagree.

Pursuant to N.C. Gen. Stat. § 7B-1104(5), (6), a petition must include among other things,

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

N.C. Gen. Stat. § 7B-1104(5), (6).

In the petition at issue, paragraphs 15 and 16 state the following:

15. That Petitioner is Wake County Health and Human Services, . . . Nannette M. Bowler is the Director of Wake County Health and Human Services.

16. That the children are in the legal custody of Wake County Health and Human Services pursuant to Orders of the Wake County Juvenile Court . . . Said Orders are designated as follows by . . . date: June 7, 2019; . . . July 10, 2019; . . . July 31, 2019; . . . August 16, 2019; . . . November 19, 2019; . . . December 2, 2019; . . . December 16, 2019; . . . August 14, 2020; . . . January 8, 2021; . . . March 30, 2021; . . . August 4, 2021; . . . November 15, 2021; . . . July 25, 2022; and . . . July 11, 2022. ***Copies of said orders are attached hereto as Exhibits . . . and are hereby incorporated by reference.***

(Emphasis added).

The prior custody orders referenced in the petition clearly establish WCHS' standing to seek a termination of Mother's parental rights in accordance with N.C. Gen. Stat. § 7B-1104(5). However, the findings of fact set forth in the orders do not *only* satisfy this purpose. The orders incorporated into the petition include facts necessary to allege neglect and willful failure to make reasonable progress. In substance, the juvenile court orders attached as Exhibits contain findings of fact concerning the children's ongoing placement in the custody of WCHS, the determination to suspend Mother's visitation, Mother's lack of progress in correcting the conditions that necessitated removal and the trial court's determination of

removing the children from Mother's custody and placing them in the custody of WCHS was in the children's best interests.

The prior juvenile court orders attached as Exhibits span a three-year period ending with an order entered on 25 July 2022 before WCHS had filed its petition for termination of parental rights on 14 October 2022. The findings of fact in the orders provide that "[t]he children [we]re all receiving therapy services and many of the protocols being used require the avoidance of interactions with persons thought to be perpetrators. The mother falls into this category." Mother was not "completely forthcoming about her role . . . as a participant or principle in the events and neglect of the children." Visitation with the children remained suspended because Mother "ha[d] not engaged in the appropriate therapy as recommended by her psychological evaluation. Many of the children do not wish to visit with their mother." None of the children's therapists recommended visitation with Mother. Jene, Jimmy, and Jack made disclosures of sexual abuse the trial court deemed credible. The incorporated orders document the children's difficulties because of their abuse and mistreatment and the resulting therapy required, the children's consistent desire not to see Mother, and Mother's lack of progress on her case plan, including failure to comply with DBT therapy.

The findings of fact contained in the prior court orders incorporated by reference into WCHS' petition for termination of parental rights give notice of the acts, omissions, or conditions supporting the statutory grounds alleged under N.C.

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Gen. Stat. § 7B-1111(a)(1) and (2), in compliance with N.C. Gen. Stat. § 7B-1104(6). Therefore, Mother's counsel could not be deemed deficient for failing to challenge the petition because the petition and incorporated attachments could reasonably have been determined to have complied with N.C. Gen. Stat. § 7B-1104(6). Mother's assertion her attorney was deficient because he did not challenge WCHS' petition for failure to state factual allegations is without merit.

2. Probability of different outcome

This Court has previously held,

The client must show that counsel's conduct fell below an objective standard of reasonableness . . . and that had counsel not made the alleged error in question, even if it was an unreasonable error, . . . there is a *reasonable probability* . . . there would have been a different result in the proceedings. The burden to show that counsel's performance fell short of the required standard is a heavy one for the client to bear.

In re C.B., 245 N.C. App. 197, 213-14, 783 S.E.2d 206, 217 (2016)(emphasis added)(cleaned up). The petition and incorporated attachments could reasonably have been determined to have complied with N.C. Gen. Stat. § 7B-1104(6) and there was overwhelming evidence to support the grounds for termination based on neglect and failure to make reasonable progress. The extensive documentation included evidence of the children's difficulties because of their abuse and mistreatment and the resulting therapy required, the children's consistent desire not to see Mother, Mother's lack of progress on her case plan, including failure to comply with DBT

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therapy, and an ongoing need over the course of six years to limit Mother's visitation with the children which was in direct contradiction to the children's need for a permanent plan. Mother fails to establish the necessary probability that the result of the termination proceeding would have been different had her trial counsel challenged WCHS' Petition to Terminate Parental Rights for being insufficient. Accordingly, Mother's argument that she suffered ineffective assistance of counsel is without merit.

III. Conclusion

Mother's arguments concerning sufficiency of WCHS' petition motion were not raised at the trial court and may not be made for the first time on appeal. Additionally, the petition and incorporated attachments could reasonably have been determined to have complied with N.C. Gen. Stat. § 7B-1104(6) and there was overwhelming evidence to support the grounds for neglect and failure to make reasonable progress. Therefore, Mother's argument her trial counsel's failure to challenge the petition constitutes ineffective assistance of counsel is without merit. We affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Judges TYSON and GORE concur.

Report per Rule 30(e).