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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-122

Filed 17 December 2024

Burke County, Nos. 21JT120, 21 JT121

IN THE MATTER OF: C.K.R. AND A.L.R.

Appeal by respondent-mother from order entered 9 November 2023 by Judge Robert A. Mullinax, Jr. in Burke County District Court. Heard in the Court of Appeals 21 November 2024.

Amanda C. Perez for petitioner-appellee Burke County Department of Social Services.

New South Law Firm, by Valerie L. Bateman, for guardian ad litem.

Kimberly Connor Benton for respondent-appellant mother.

GORE, Judge.

Respondent-Mother appeals a trial court order terminating her parental rights to her minor children, C.K.R. (“Cameron”) and A.L.R. (“Autumn”).¹ After careful review, we affirm.

I. Factual Background and Procedural History

¹ Pseudonyms have been agreed upon by the parties and are used for ease of reading and to protect the identities of the juveniles in accordance with N.C.R. App. P. 42.

On 6 April 2021, mother took Cameron to a doctor's appointment. Caldwell County Department of Social Services ("Caldwell DSS") received a report asserting mother appeared to be under the influence of substances at the appointment. She had slurred speech and was falling asleep during the child's examination. Cameron was wearing shoes and a shirt several sizes too big for him. It appeared he had not bathed in some time.

On 12 April 2021, Caldwell DSS spoke to Autumn, who relayed to the social worker she was frightened by mother's boyfriend and alleged instances of sexual abuse committed by him. She reported after eating dinner at his home, she would get sleepy and wake up with bruises on her thighs. Another caretaker took Autumn to Catawba Valley Medical Group on 13 April 2021 due to her complaints of a vaginal blister, burning in her private area, and a milky discharge with blood. The hospital assessment indicated suspected child sexual abuse.

A Caldwell County detective and a Caldwell DSS social worker separately met with mother. Mother would not discuss the allegations or consent for Autumn to be interviewed alone.

On 28 May 2021, Burke County Department of Social Services ("Burke DSS") received a report that mother and her boyfriend were selling drugs from the home.

On 1 September 2021, Burke DSS² filed a juvenile petition alleging that Cameron and Autumn were neglected and dependent juveniles based on the above allegations. The trial court entered an order for nonsecure custody the same day, placing the children with Burke DSS. The order for nonsecure custody was extended multiple times until the adjudication hearing.

The adjudication hearing took place on 4 February 2022. For purposes of adjudication only, mother, Burke DSS, and the guardian *ad litem* stipulated to certain facts prior to the hearing. These stipulated facts included mother's residence could not be established as she frequently moved between counties, admissions of substance use, and possible sexual abuse of Autumn.

The trial court adjudicated Cameron and Autumn as dependent juveniles, finding that their mother was unable to provide for their care or supervision and they lacked an appropriate alternative childcare arrangement. The trial court also adjudicated Cameron and Autumn as neglected juveniles as mother did not provide proper care, supervision, or discipline for them, and they lived in an environment injurious to their welfare.

During the disposition phase of the hearing, the trial court found mother had significant substance abuse issues of a longstanding and enduring nature, which made her unable to adequately care for her children. During a family assessment by

² At the time of the filing of the juvenile petition, the juveniles were living in Burke County.

Caldwell DSS, a social worker found mother passed out in a vehicle parked in a driveway, where she appeared to be under the influence. Other case workers reported seeing mother snort pills. Mother also displayed erratic behaviors, showing extreme anger and extreme highs and lows. During a visit with her children, she purportedly attacked Autumn, sat on top of her, and threw wax at her.

The trial court also found mother had tested positive for oxycodone and noroxycodone on 18 October 2021, roughly six weeks after the trial court had entered the first non-secure custody order. On the day of the adjudication hearing (4 February 2022), mother voluntarily submitted to a drug screen and tested positive for oxycodone and benzodiazepines. The trial court found she was actively using controlled substances and was demonstrating drug seeking behavior by going to multiple emergency rooms for pain, which could be treated with medication other than controlled substances.

The trial court ordered mother to enter into and comply with a case plan that included the following:

- a. Complete a Comprehensive Clinical Assessment and follow all recommendations.
- b. Complete a parenting education program approved by the Department and demonstrate the learned parenting skills when interacting with the minor children.
- c. Attend all child wellbeing appointments that are in the best interest of the minor children and demonstrate an understanding of the minor children's needs.

- d. Obtain and maintain safe and stable housing.
- e. Obtain and maintain legal and verifiable employment.
- f. Submit to random drug screening via hair follicle and urine testing.
- g. Refrain from engaging in criminal activity or any illegal drug use.
- h. Sign releases for all treatment providers to share information with the Department.

The trial court suspended visitation between mother and her children while they participated in Trauma Focused Cognitive Behavioral Therapy. The juveniles were to remain in the custody of Burke DSS.

On 21 July 2022, the trial court held a permanency planning hearing. The trial court found mother had made no progress on her case plan goals. The trial court ordered a permanent plan with a primary plan of adoption and a secondary plan of reunification. The children expressed a desire to be adopted by their foster family and did not want any contact with their mother. Mother attempted to contact the children despite a court order not to do so. Due to her continued attempts to contact the children, the trial court added a requirement to her case plan—completion of a parenting capacity assessment approved by Burke DSS.

On 8 December 2022, the trial court held a second permanency planning hearing. The trial court again found mother had made no progress on her case plan goals. Mother also failed to attend 18 drug screenings. The trial court kept the

permanent plan in place—a primary plan of adoption and a secondary plan of reunification.

At the third permanency planning hearing on 30 March 2023, the trial court again found mother had not completed any item on her case plan. At the fourth permanency planning hearing on 8 June 2023, the trial court found that mother had been “minimally compliant” with her case plan, explaining she had not been in contact with Burke DSS for eight months before recently engaging in communications and services. The trial court found she was temporarily living with her sister in South Carolina and was working as a housekeeper in an assisted living facility. The trial court also found she had tested positive on 30 March 2023 for opiates, cannabinoids, norhydrocodone, hydrocodone, and THC. The trial court noted Burke DSS was having difficulty drug testing mother due to her living out of state.

On 14 August 2023, DSS filed a motion for termination of parental rights on grounds of neglect, willful failure to make reasonable progress, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (2), (6) (2023).

The trial court heard the motion on 27 October 2023. On 9 November 2023, the trial court entered a termination order adjudicating the existence of all three grounds for termination alleged in the termination motion. The trial court also determined it was in the juveniles’ best interests to terminate mother’s parental rights. Accordingly, the trial court terminated mother’s parental rights to both juveniles. Mother entered a timely notice of appeal on 17 November 2023.

II. Analysis

Termination of parental rights proceedings are a two-step process consisting of an adjudicatory stage and a disposition stage. *In re D.W.P.*, 373 N.C. 327, 330 (2020). If the trial court finds at least one ground to terminate parental rights at the adjudicatory stage, the court then “proceeds to the dispositional stage,” where the court “considers whether it is in the best interests of the juvenile to terminate parental rights.” *Id.*; N.C.G.S. § 7B-1110 (2023).

Here, mother does not challenge the dispositional portion of the order. She only challenges the adjudicatory portion of the order, where the trial court adjudicated three grounds to support termination of her parental rights.

This Court reviews an adjudication order “to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re Montgomery*, 311 N.C. 101, 111 (1984). Unchallenged findings “are deemed [to be] supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407 (2019). We review “a trial court’s conclusion of law concerning adjudication de novo.” *In re G.C.*, 384 N.C. 62, 66 (2023).

Mother argues that certain findings of fact by the trial court are unsupported by the evidence and, therefore, there was insufficient evidence to support the trial court’s conclusion that grounds for termination existed.

One of the three termination grounds the trial court adjudicated was willfully leaving the juveniles in a placement outside the home for more than twelve months

without showing reasonable progress in correcting the conditions which led to the removal of the juveniles, per N.C.G.S. § 7B-1111(a)(2). As explained below, we hold the findings of fact related to this ground were supported by clear, cogent, and convincing evidence and supported the trial court's adjudication on this ground. Therefore, the remainder of this opinion analyzes mother's arguments and challenges to findings of fact as they pertain to this ground only. *See In re C.J.*, 373 N.C. 260, 263 (2020) (if one particular ground for termination exists, then we need not review any remaining grounds); *see also In re T.N.H.*, 372 N.C. at 407 ("[W]e review only those findings necessary to support the trial court's determination that grounds existed to terminate [mother's] parental rights."); *accord In re A.R.A.*, 373 N.C. 190, 195 (2019).

A. Mother's Challenges to Findings of Fact

Relevant to the adjudication of grounds for termination under N.C.G.S. § 7B-1111(a)(2), mother challenges the following findings necessary to support this ground:

a. Finding of Fact 41

Mother challenges only the last sentence of finding of fact 41:

41. The respondent mother did not complete her [Comprehensive Clinical Assessment] (CCA) until September 15, 2023, a month after the Department file[d] the termination motion. The Department referred [Mother] for a CCA many months prior to the filing of the termination motion. [Mother's] September 15th effort is the very definition of the phrase "too little, too late."

Mother argues the "too little, too late" comment failed to take into

consideration her additional efforts to comply with her case plan. But mother does not challenge the more substantive first part of the finding—that she completed her CCA on 15 September 2023, twenty-three months after the start of her case plan and one month after Burke DSS filed its petition for termination of parental rights. Because the first part of the finding is sufficient to support the trial court’s conclusion that mother did not make reasonable progress, the last portion of the finding is unnecessary and will be disregarded.

b. Finding of Fact 45

Mother challenges only the italicized portions below:

45. The Department had no contact with [Mother] from May 2022 to March 2023. [Mother’s] attempts to explain that lack of contact are wholly inadequate and unsatisfactory. She claims to have had a bone taken off of her hip and put into her neck and to have had a broken tailbone and fractured neck. She “believes” that she had the surgery at Frye Hospital and that it “probably” took place in September or October of 2022. She has provided no written evidence of her disability and even if true, her “probable” hospitalization of almost four weeks fails to explain her 10 month absence from the planet Earth.

Mother argues there was no evidence offered to dispute her testimony that she was hospitalized for a surgical procedure, nor that she was unable to physically communicate for a month. She also argues no testimony tends to show she was absent “from the planet Earth” for a ten-month period.

Mother, however, does not challenge the finding she did not have contact with Burke DSS for ten months. She only attempts to provide a reason why she did not

have contact for one month out of the ten-month period. The social worker testified Burke DSS had no contact with mother for these months.

“[I]t is [the trial] judge’s duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given [to] their testimony and the reasonable inferences to be drawn therefrom.” *In re Whisnant*, 71 N.C. App. 439, 441 (1984). Here, the trial court determined the mother’s evidence was not credible. This determination is within the authority of the trial court. When coupled with the testimony from the Burke DSS social worker, there was sufficient evidence and testimony to support this finding.

To briefly address mother’s other argument regarding this finding—we do not believe the trial court meant that mother was actually off “from the planet Earth” for a ten-month period. The trial court was simply using a figure of speech to restate what it found in the first sentence of the finding—that mother had no contact with Burke DSS for a ten-month period. Because this part of the finding is surplusage and is unnecessary to support the ground for terminating her parental rights, we disregard this portion of the finding.

c. Finding of Fact 55

Mother challenges the entirety of finding of fact 55:

55. There is nothing currently preventing the mother from engaging in services and she has demonstrated a lack of compliance with services.

Mother argues no evidence shows she was not engaged in services or that she

demonstrated a lack of compliance with her services. She argues she completed the CCA, maintained housing and employment, and completed a substance abuse and parenting class.

Unchallenged findings are deemed to be “supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. at 407 (citations omitted). Here, the unchallenged findings of fact support this finding. First, as noted above, her completion of the CCA came twenty-three months into her case plan, after Burke DSS filed the TPR petition. As to her argument regarding housing, the trial court found mother had not established safe and stable housing. For her parenting class, mother was ordered to take a new course in July 2023 because more than a year had passed since she completed an initial class. She did not complete the new class. Mother was also ordered to undergo a Parenting Capacity Evaluation. The trial court found that she received a referral for this service from Burke DSS, but never completed it. The unchallenged findings support finding of fact 55.

d. Findings of Fact 49 and 56

Mother challenges the italicized part of finding of fact 49:

49. On July 18, 2022, [mother] completed an 8-hour drug and alcohol awareness class and passed a written knowledge assessment through The Course for Drugs and Alcohol. . . . *The 8-hour class taught via the world wide web was wholly inadequate to address her extensive substance abuse issues as evidenced by her repeated post-class positive screens and otherwise refusing to provide samples.*

Mother challenges finding of fact 56 in full:

56. The respondent mother has failed to demonstrate sobriety and has not taken adequate steps to address her substance abuse issues.

Mother argues finding of fact 56 is actually a conclusion of law and not a finding of fact. We disagree. The finding is as an inference drawn from the evidence in the record and is appropriately included in the findings of fact. *See In re A.B.*, 179 N.C. App. 605, 611–12 (2006) (cleaned up) (“Any determination reached through logical reasoning from the evidentiary facts is more properly classified as a finding of fact.”); *see also In re Whisnant*, 71 N.C. App. at 441.

Both findings address mother’s continued substance abuse issues. Mother argues there was insufficient evidence to support the findings. Again, we disagree. Both are supported by clear, cogent, and convincing evidence in the record. Mother tested positive for illegal controlled substances and non-prescribed legal controlled substances in October 2021, February 2022, May 2022, March 2023, and August 2023. Mother completed the drug and alcohol course on 18 July 2022. Prior to taking the course, she had missed eight drug screenings. After completing the course, she failed to attend sixteen of eighteen scheduled drug screenings. She tested positive for the two she did attend. Sufficient evidence supports the finding she had failed to demonstrate sobriety and the substance abuse class was inadequate to address her substance abuse issues.

e. Findings of Fact 61 and 62

Mother challenges these findings on the basis that they are not findings of fact,

but rather conclusions of law.

61. The respondent mother has willfully left the juveniles in out of home placement for more than twelve (12) months.

62. The respondent mother has not demonstrated any significant or reasonable progress towards correcting the conditions that led to the juveniles' removal from [her] care. This failure was willful. Poverty is not the sole reason for her lack of compliance.

These findings are not conclusions of law, but rather determinations of the ultimate facts. "Ultimate facts are the final facts required to establish the [petitioner]'s cause of action or the [respondent]'s defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts." *In re G.C.*, 384 N.C. 62, 65 n.3 (2023). "[A]n ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning." *Id.* "A trial court's finding of an ultimate fact is conclusive on appeal if the evidentiary facts reasonably support the trial court's ultimate finding of fact." *Id.* at 65 (cleaned up).

In re Z.A.M., 374 N.C. 88, 95 (2020), describes the ultimate facts required to support the ground for terminating parental rights in N.C.G.S. § 7B-1111(a)(2):

Termination under this ground requires the trial court to perform a two-step analysis where it must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

Here, for the trial court to conclude that termination under this ground was proper, it needed to find, as ultimate facts, that the children were (1) willfully left in a placement outside the home for more than twelve months, and (2) mother had not made reasonable progress to correct the conditions that led to their removal.

“[T]he twelve-month period begins when a child” is placed outside the home “pursuant to a court order, and ends when the . . . petition for termination of parental rights is filed.” *In re J.G.B.*, 177 N.C. App. 375, 383 (2006). Mother does not dispute that Autumn and Cameron were left in a placement outside the home for over twelve months. Both juveniles were removed from mother’s care on 1 September 2021 and remained in the care of Burke DSS up to the time the petition was filed on 14 August 2023—a total of twenty-three and a half months.

Mother argues that the out of home placement was not willful on her part. She also argues that she made reasonable progress to correct the conditions which led to the removal of the children.

In this case, mother’s willfulness and whether she had made reasonable progress to correct the conditions that led to the children’s removal are tied to the progress mother made on her case plan. A parent’s willfulness “is established when the parent had the ability to show reasonable progress, but was unwilling to make the effort.” *In re A.S.D.*, 378 N.C. 425, 428 (2021) (cleaned up). “[T]he reasonableness of the parent’s progress ‘is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights.’” *In re T.M.L.*, 377 N.C. 369, 372

(2021) (citations omitted). “A parent’s delay in . . . attempting to address the conditions leading to a child’s removal from the home has indisputable relevance to an evaluation of the willfulness of a parent’s conduct and the reasonableness of that parent’s progress in correcting the conditions that had led to a child’s removal from the family home” *In re D.A.A.R.*, 377 N.C. 258, 274 (2021). Likewise, a parent’s “prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness ‘regardless of her good intentions,’ and will support a finding of lack of progress . . . sufficient to warrant termination of parental rights[.]” *In re J.S.*, 374 N.C. 811, 815 (2020) (citations omitted). “[P]arental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2)” *In re B.O.A.*, 372 N.C. 372, 384 (2019).

Mother admits that she took “a significant amount of time to initiate compliance with the court order,” but argues that by the time of the TPR hearing, she had substantially complied with it. We disagree. From the time mother entered into the case plan on 15 October 2021, to the time of the TPR hearing on 27 October 2023, mother made only marginal progress on her case plan.

First, mother was required to complete a CCA and follow all its recommendations. We have already discussed mother’s failure to complete the CCA in a timely fashion, completing it twenty-three months after entering into a case plan. As for following its recommendations, given mother’s completion of the CCA just

weeks prior to the TPR hearing, there was no time for DSS or the trial court to evaluate this part of the case plan.

Next, mother was required to complete a parenting education program. Though she entered her case plan on 15 October 2021, she did not take any steps toward completing a program until she completed an 8-hour online class on 12 July 2022 called “Parenting Education and Family Stabilization.” In July 2023, the trial court ordered mother to take a new parenting class because of the extended time that had passed since completion of the first class, and due to her complete absence from the lives of her children for the preceding year. There is no evidence she completed the new course. She also failed to undergo a parenting capacity evaluation, although she was referred by Burke DSS at the outset of the case.

Mother did appear to make some progress on her case plan goal of obtaining legal and verifiable employment. In March 2023, she began full time work as a housekeeper at a retirement home in Charlotte. Prior to this employment, she was employed in a different capacity for five months in 2022.

Mother was also required to obtain safe, stable, and suitable housing. At the time of the TPR hearing, mother had been residing with her sister in South Carolina since January 2023. Mother admitted at the hearing this housing was not appropriate for her children. For four months prior to January 2023, she had lived with a friend, and prior to that time, she lived with a romantic interest she became

involved with after the trial court entered its nonsecure custody order in September 2021.

Most significant is mother's lack of progress on her case plan goals related to her substance abuse issues— not submitting to random drug screenings and refraining from illegal substance use. From the beginning of her case plan to the TPR hearing, mother failed to show for twenty-three drug screens. Of the drug screenings she did show for, she tested positive. Mother had a hair follicle screening three days after entry of her case plan on 18 October 2021. She tested positive for oxycodone and noroxycodone.

On the day of the adjudication hearing (4 February 2022), she tested positive for oxycodone and benzodiazepines. On 17 May 2022, she tested positive for cannabinoids, THC, amphetamines, and methamphetamine. After this screening, mother failed to attend the next twenty scheduled screenings, through a ten-month period when she had no contact with Burke DSS. When she showed for her 30 March 2023 screening, she tested positive for opiates, cannabinoids, norhydrocodone, hydrocodone, and THC. She failed to attend a screening in July 2023. At the last screen she attended on 23 August 2023, she tested positive for THC.

These evidentiary findings support the trial court's ultimate findings of fact mother willfully left her children in a placement outside the home for more than twelve months and that she had not made reasonable progress to correct the conditions that led to their removal.

B. Mother's Challenge to the Conclusion of Law

With the ultimate facts established above, the trial court correctly concluded the requirements of N.C.G.S. § 7B-1111(a)(2) had been met.

Mother challenges this conclusion of law, arguing that according to *In re B.O.A.*, 372 N.C. at 384, the trial court may only determine the parent was noncompliant with a case plan such that it supports the termination of parental rights when there is “a nexus between the components of the court-approved case plan which the parent failed to comply with and the conditions which led to the children’s removal from the parental home.”

A nexus is present in this case. Caldwell and Burke DSS initially removed the children from her care in large part due to her substance abuse issues. The juveniles were adjudicated to be neglected and dependent due to her substance abuse and her failure to be a protective parent regarding Autumn’s suspected sexual abuse by her boyfriend. Mother was found to be transient with unstable housing. As detailed above, mother made no progress on her case plan to address her substance abuse or housing issues.

“[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. at 385; *see, e.g., In re J.S.*, 374 N.C. at 819 (affirming adjudication under N.C.G.S. § 7B-

1111(a)(2) even though the mother completed some of her case plan, and determining she “failed to make meaningful progress in improving the conditions of her home”); *In re S.N.*, 194 N.C. App. 142, 149 (2008) (cleaned up) (determining that “there was sufficient evidence to support the trial court’s finding that respondent’s extremely limited progress was not reasonable progress under § 7B-1111(a)(2).”), *aff’d*, 363 N.C. 368 (2009). See *In re I.G.C.*, 373 N.C. 201, 206 (2019) (affirming adjudication under N.C.G.S. § 7B-1111(a)(2) when the “respondent-mother waited too long to begin working on her case plan and that, as a result, she had not made reasonable progress toward correcting the conditions that led to the children’s removal by the time of the termination hearing.”).

Accordingly, by concluding mother had willfully left her children in an out of home placement for more than twelve months and had failed to make reasonable progress in correcting the conditions that led to their removal, the trial court correctly concluded that grounds existed to terminate mother’s parental rights under N.C.G.S. § 7B-1111(a)(2) (2023).

III. Conclusion

The trial court’s determination concluding grounds existed to terminate respondent’s parental rights under N.C.G.S. § 7B-1111(a)(2) was supported by the court’s findings of fact and clear, cogent, and convincing evidence. Because the adjudication of any single ground is sufficient to support termination of parental rights, and because mother does not challenge the trial court’s determination at

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disposition it was in the juveniles' best interests to terminate her parental rights, we affirm the trial court's termination order.

AFFIRMED.

Judges TYSON and WOOD concur.

Report per Rule 30(e).