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NO. COA01-1107

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

IN THE MATTER OF:

GENIE KENNEDY,
JOSEPH KENNEDY, and
JERRI LYNN DRAUGHON,
Minors

Sampson County
Nos. 94 J 30-31;
00 J 23

Appeal by respondents Jerry and Irma Jo Draughon from orders entered 15 March 2001 by Judge William M. Cameron, III in Sampson County District Court. Heard in the Court of Appeals 22 July 2002.

Benjamin R. Warrick for petitioner-appellee Sampson County Department of Social Services.

Christopher Wyatt Livingston for respondents-appellants Jerry and Irma Jo Draughon.

WALKER, Judge.

Petitioner Sampson County Department of Social Services (DSS) initiated this action by motion for review, seeking to terminate respondents Jerry and Irma Jo Draughon's visitation rights as to the minor children--Genie Kennedy, Joseph Kennedy, and Jerri Lynn Draughon. Respondents are the biological parents of Jerri Lynn Draughon, and the mother and stepfather of the other minor children born to respondent mother from a previous relationship.

The evidence tends to show that the minor children had previously been adjudicated dependent and placed in foster care.

After approximately one year, during which instances of domestic violence continued between respondent parents with no progress towards reunification, the trial court ordered that DSS change its plans to reflect a goal of relative placement or termination of parental rights. Respondent parents continued, however, to enjoy visitation with the three minor children.

At a review hearing on or about 23 January 2001, the trial court found that the children were reacting badly to visitation with respondent parents. At that time, the trial court did not stop visitation but stated that it would entertain a motion to terminate visitation should such be specifically pled in the future. The trial court went on to admonish respondent parents to spend time loving and bonding with the minor children and to refrain from questioning them and raising issues with DSS personnel.

On or about 26 January 2001, DSS filed motions for review requesting termination of visitation between respondent parents and the minor children. This matter was heard by the district court on or about 13 March 2001. DSS presented evidence which tended to show that respondent parents spent most of their visits with the minor children questioning them about "who's been hitting them . . . , giving them instructions to foster caregivers, [and] admonishing social workers about what they should and shouldn't be doing [.]" Ruth Holland, an agent for DSS, testified as to specific occasions during which the minor children acted out or exhibited physical manifestations of problems with visitation with respondent parents.

Holland stated that Joseph complained that his stomach hurt, cried the entire way en route to the visitation, constantly visited the bathroom with an upset stomach, and began to act up in school in response to visitation. Genie acted withdrawn during visitation, causing one therapist to ask if she had ever been sexually abused. Both Joseph and Genie specifically requested that visitation with respondent parents be discontinued. The youngest child, Jerri Lynn, was too young to know that respondent mother was her mother. Jerri Lynn's physician opined that "the child does not need to ever be returned to the care of her mother," based upon the fact that the child had overcome great motor skills deficiencies since being removed from the home of respondent parents.

Respondent parents presented the testimony of Dr. Abu-Salah, a psychiatrist with Duplin-Sampson Mental Health, who testified based upon a one-hour interview with respondent mother. Dr. Abu-Salah noted that although respondent mother did have some personality problems, as illustrated by unrest with her in-laws, marriage partners, the law, DSS and people in the community, he was unable to diagnose respondent mother with any major or symptomatic mental illness. Respondent mother then testified in her own behalf, denying that Ruth Holland ever asked her not to question the children about their foster care, despite having testified to this fact during an earlier 23 January 2001 hearing and the trial court having rendered an order in this regard on 23 January 2001, and despite respondent father testifying that he recalled such a conversation between Holland and respondent mother. In addition,

respondent mother continued to allege bias by DSS, without being able to identify any specific instances. At one point, respondent mother alleged that DSS hand-picked the trial judge who heard her criminal case. Respondent father acknowledged his alcoholism and took responsibility for past domestic violence. He testified that he had taken steps to correct those problems. Both parents expressed a wish to continue visitation with the minor children.

After hearing the evidence and arguments of respondents' counsel and the children's Guardian Ad Litem in this matter, the trial court entered an order terminating visitation. Respondent parents appeal.

By their sole assignment of error on appeal, respondent parents argue that the trial court abused its discretion in terminating visitation with the minor children. We disagree.

The standard of review used on appeal of a visitation order is well settled: "[A] trial court should only be reversed if the dissatisfied party demonstrates that the trial court committed a manifest abuse of discretion." *Hill v. Newman*, 131 N.C. App. 793, 799, 509 S.E.2d 226, 230 (1998). Further, since the trial court sits as trier-of-fact, its findings will not be disturbed on appeal if there is substantial competent evidence to support those findings. See *Newsome v. Newsome*, 42 N.C. App. 416, 426, 256 S.E.2d 849, 855 (1979).

In the instant case, DSS presented the testimony of the social worker, Ruth Holland, who had been involved in this case for some five or six years. The trial court also had before it the written

reports of Holland and the minor children's Guardian Ad Litem, along with various attachments. Moreover, it was stipulated by respondents' attorney that the matter of the parents' behavior during visitation had been discussed during the 23 January 2001 review of this case, but "in abundance of caution, Judge Jones set [the matter] back before the [c]ourt just to confirm that my clients had had sufficient notice on this particular issue." All indications were that during visitation, respondent mother routinely questioned the children, to the point of agitation, about their treatment in foster care and discouraged the children from listening to their foster parents. In addition, the evidence presented by DSS tended to show that the minor children were exhibiting physical manifestations of problems with visitation with respondent parents, including upset stomachs and crying en route to visitations. Of particular note was the two older children's request that they not be required to visit with their parents. The youngest child, who was probably too young to even remember her mother, was noted by her physician to have made great strides in her development since removal from the home of the respondent parents. The child's doctor had previously opined that the child "does not need to ever be returned to the care of her mother." The report of the minor children's Guardian Ad Litem indicated that the respondent parents had not improved the situation which led to the removal of the children from the home, and that the children were acting up generally--and not just at visits--because they had been in foster care for so long.

The evidence presented by respondent parents did little to rebut DSS's evidence. Dr. Abu-Salah, a psychiatrist who had examined respondent mother, testified that he did not find any major or symptomatic mental illness as a result of his one-hour interview with respondent mother. The doctor did, however, opine that respondent mother had some personality problems, which would explain past unrest with her in-laws, marriage partners, DSS, and other persons in the community. This personality problem was further borne out when respondent mother took the witness stand, and, despite her own previous testimony and the court's previous admonishment in open court, denied ever being told to curtail her close questioning of her children during visits. Respondent mother insisted that DSS was biased against her and alleged (without any evidence) that the judge who heard her criminal case was hand-picked by DSS. Finally, while both parents wished for visitation with the minor children to continue, the negative effects of that visitation could not be ignored.

We conclude then that there was plenary evidence to support the trial court's findings. In light of those findings, we further conclude that the trial court did not abuse its discretion in terminating visitation between respondent parents and the minor children. Accordingly, the orders of the trial court terminating visitation between respondent parents and the minor children are

Affirmed.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).