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NO. COA01-1216

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

IN THE MATTER OF:
GREGORY GRAY, JR.,
GREGORY S. GRAY,
MEGAN GRAY

Cabarrus County
97 J 97

Appeal by respondent from order entered 18 January 2001 by Judge William G. Hamby, Jr., District Court, Cabarrus County. Heard in the Court of Appeals 14 August 2002.

Cabarrus County Department of Social Services, by Kathleen Arundell Widelski, for petitioner-appellee.

Scott C. Robertson, for the respondent-appellant.

WYNN, Judge.

This appeal arises from respondent father's challenge to the trial court's termination of his parental rights to his three minor children.¹ The issues on appeal are whether the trial court: (I) erred in finding that respondent had neglected the juveniles pursuant to N.C. Gen. Stat. § 7B-101(15); (II) erred in finding that respondent failed to contribute toward the cost of care in the six months preceding the filing of the petition; and (III) abused its discretion in determining that it was in the best interest of

¹The children's biological mother voluntarily relinquished her parental rights before the termination hearing.

the children to terminate the parental rights of respondent. We affirm because the trial court's findings of fact support at least one of the grounds for terminating parental rights under N.C. Gen. Stat. § 7B-1111. See *In re Swisher*, 74 N.C. App. 239, 240, 328 S.E.2d 33, 35 (1985).

The facts pertinent to this appeal are essentially contained in the trial court's findings of fact:

7. On December 29, 1999, the children were adjudicated neglected as defined by N.C.G.S. 7B-101(15). The findings of fact contained in the Adjudication Order are incorporated by reference as findings of fact in this termination order.

8. On July 9, 1997, the children were placed in the custody of the CCDSS. The children were adjudicated neglected on August 8, 1997. The parents stipulated in the adjudication order to the facts alleged in the petition. The July 9, 1997 Petition and August 8, 1997 Adjudication Order are incorporated by reference as findings of fact in this termination order.

9. On January 20, 2000, a disposition hearing was held. The findings of fact contained in the Disposition Order of January 20, 2000 are incorporated by reference as findings of fact in this termination order.

10. On May 4, 2000, the court conducted a review of the parents' progress and found the parents had made no progress in addressing the issues that led to the children's placement in foster care. A permanency planning hearing was held on May 25, 2000 and the CCDSS was ordered to proceed with a termination of parental rights against the parents.

11. Upon his incarceration, Mr. Gray was told by Jane Cauthen and Jennifer Linn-Raby to write the children and/or send cards, which would be read to the children. Mr. Gray did not do so.

12. Since October 29, 1999, the CCDSS has expended \$17,748.69 for the children's cost of care. Mr. Gray did not make any contributions towards the cost of care during the time the children have been in the CCDSS' custody.

13. Gregory Gray, Jr., is currently receiving intensive therapy for issues related to attachment. The child has engaged in aggressive behaviors with peers and teachers. He requires a one on one worker in the classroom. The therapy works on helping the child develop a bond; expressing his feelings about his parents and developing ways to deal with his anger.

14. Mr. Gray worked from April 1999 through July 2000 installing car stereos. He made from \$100.00 to \$300.00 on average but sometimes did not earn anything. He also earned money from the sale of illegal drugs. He has earned \$0.40 per day since his incarceration. He has had two infractions since being incarcerated.

15. The father continued to engage in criminal activity resulting in new convictions for Possession for Intent to Sell and Deliver Marijuana and Maintaining a Dwelling for the Purpose of the Sale of Drugs. He also was violated on his probation case for Possession with Intent to Sell and Deliver Cocaine and Maintaining a Dwelling for the Purpose of the Sale of Drugs and was incarcerated on July 19, 2000 to serve sentences of eight months. The true copies of the defendant's convictions were received into evidence and are incorporated by reference.

15. The court takes judicial notice of the court orders, court summaries and GAL reports that were submitted into evidence and are part of the child protective services juvenile record in this matter [in] so far as they contain additional and relevant information to the termination issues and to that extent are incorporated by reference.

17. This matter was not bifurcated and adjudication and disposition was heard together.

Based on the above findings of fact, the trial court concluded that:

2. The children were removed from Mr. Gray's care in October, 1999. Mr. Gray continued to engage in criminal activity. He is currently incarcerated in the N.C. Department of Corrections. The possibility exists that Mr. Gray can change upon his release. The probability of the repetition of neglect is greater. The children have been in care for fifteen months and need a permanent home as soon as possible. Mr. Gray is currently unable to provide a permanent safe home for the children.

3. Gregory Gray has neglected the children defined in N.C.G.S. 7B-101 (a)(15). There is a probability of the repetition of neglect should the children be returned to his care.

4. Gregory Gray has failed to contribute to the cost of the children's care in the six months next preceding the filing of the petition though financially and physically able to do so. In the six months next preceding the filing of the petition Mr. Gray could have paid some amount greater than zero towards the children's care.

5. Sufficient grounds exist to terminate the parental rights of Gregory Gray based upon clear, cogent and convincing evidence.

6. It is in the children's best interests to terminate the parental rights of Gregory Gray, father.

Accordingly, the trial court terminated the parental rights of respondent. Respondent appeals.

In North Carolina, Chapter 7B sets forth the procedural requirements for the termination of parental rights; it requires that the trial court make a two-stage inquiry. See N.C. Gen. Stat.

§ 7B-1110 (2001). First, in the adjudicatory stage, the trial court must determine whether the evidence clearly and convincingly establishes at least one ground for the termination of parental rights listed in N.C. Gen. Stat. § 7B-1111. See *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Second, if at least one ground for termination is established at the adjudication stage, the matter proceeds to the dispositional stage where the trial court,

shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

N.C. Gen. Stat. § 7B-1110 (2001); See *In re Carr*, 116 N.C. App. 403, 448 S.E.2d 299 (1994) (holding that "the court may exercise its discretion in the dispositional stage only after the court has found that there is clear and convincing evidence of one of the statutory grounds for terminating parent rights").

"The standard for review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984); see also *In re Ballard*, 311 N.C. 708, 716, 319 S.E.2d 227, 232 (1984); *In re Huff*, 140 N.C. App. 288, 536 S.E.2d 838 (2000), *appeal dismissed, disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). If the petitioner meets its burden, and the trial court's findings of fact support any one of the grounds in N.C. Gen. Stat. § 7B-1111, we should affirm the

order terminating the parent's rights. See *In re Swisher*, 74 N.C. App. 239, 240, 328 S.E.2d 33, 35 (1985).

Respondent first argues that the trial court erred in finding that he has neglected his minor children pursuant to N.C. Gen. Stat. § 7B-101(15) and that there is a probability of the repetition of neglect should the children be returned to his care. Termination of parental rights under the statutory grounds of neglect provides that:

The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

N.C. Gen. Stat. § 7B-1111(a)(1) (2001). Under N.C. Gen. Stat. § 7B-101(15) (2001) a neglected child is

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). "[T]he trial court must admit and consider all evidence of relevant circumstances or events which existed or occurred either before or after the prior adjudication of neglect." *In re Ballard*, 311 N.C. at 716, 319 S.E.2d at 232-233.

The respondent argues that adjudication of neglect was based

on evidence that was presented against him and the biological mother, who has since relinquished her rights. Respondent further argues that the first adjudication of neglect was based on past circumstances that did not exist at the time of the January 2001 hearing.

"[A] prior adjudication of neglect may be admitted and considered by the trial court in ruling upon a later petition to terminate parental rights on the ground of neglect." *In re Ballard*, 311 N.C. 708, 713-14, 319 S.E.2d 227, 231 (1984). A trial court in such cases must make an independent determination as to whether grounds exist for termination at the time of the hearing. *Id.* at 716, 319 S.E.2d at 233. Moreover, "[a]ny past circumstance or conduct which could impact either the present or the future of a child is relevant, notwithstanding the fact that such circumstance or conduct did not exist or was not being engaged in at the time of the custody proceeding." *Speagle v. Seitz*, 354 N.C. 525, 531, 557 S.E.2d 83, 87 (2001), *reh'g denied*, 355 N.C. 224, 560 S.E.2d 138, *cert. denied*, 122 S. Ct. 2589, 70 U.S.L.W. 3656 (2002); *Davis v. McMillian*, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 6, 2002).

A review of the record and transcript shows each of the trial court's findings are supported by clear, cogent and convincing evidence. The trial court provided seventeen detailed findings of fact. Five of these findings were incorporated from the 29 December 1999 adjudication order. The trial court also took judicial notice of the court order summaries and Guardian ad Litem

reports that were submitted into evidence. We hold that the trial court properly considered both evidence of neglect by the parents prior to losing custody of the children (including the prior adjudication of neglect) as well as evidence of conditions since that time showing a likelihood of neglect in the future.

At the termination hearing, Jane Cauthen, the child welfare program manager with the Cabarrus County Department of Social Services, who is the supervisor overseeing the case, testified that the issues that led to the children being adjudicated neglected in 1997 were similar to the issues before the Court at the hearing on 18 January 2001. In 1997, the children were removed due to conditions of the home and drug use by both parents. The twins were born addicted to cocaine and the parents did not visit them very much while they were in the hospital. She stated that

When the kids were brought in the second time, conditions were similar in that the home environment was injurious to their welfare, they were not being properly supervised, the drug activity was still a part of both parents' life . . . It was different for [the children] this time in that [the father] was not using drugs but dealing drugs and having drug activity in their home.

Ms. Cauthen also testified that she spoke periodically with respondent after he was placed in the Department of Corrections. She told him that he would not get visits from his children while he was incarcerated but that he could write to the children or send them cards. However, respondent did not correspond with the children.

Moreover, Jennifer Lynn-Raby, a foster care social worker who

was assigned to the case of the three minor children, testified that respondent asked

if the children could be brought to prison and I told him that we couldn't do that; and he said he had a letter and some cards for the children and I told him the best thing he could do was to make sure he contacted the children by writing them or sending them cards.

According to Ms. Lynn-Raby respondent never sent a letter or card to the children during their second time in foster care.

Further, Dana Horn, a mental health therapist testified that the oldest child suffers from a reactive attachment disorder which is a developmental disorder that is acquired when a child is not able to form an attachment or bond with a primary caregiver in the first two years of their life. She testified that the child

has a lot of issues with attachment meaning I don't want to trust the people out there: Mom and Dad haven't been dependable, they haven't been around, there's been fighting, there's been drugs, its not safe. So he has been in different placements, he's been back at Mom and Dad's, he's had an inconsistent environment from what I've read and as a result has decided not to trust adults.

At the termination proceeding, respondent had the opportunity to present evidence relating to before and after the adjudication of neglect. Respondent testified, and presented some contrary evidence, such as he had a fiancée and that they were both willing to do whatever they had to do to reunite the children; he had not done any drugs since 1998 and he had attended alcoholics anonymous and narcotics anonymous. However, in considering all of the circumstances, the evidence of neglect existing prior to removal of

the children from the home and the conduct of the respondent while the children were in foster care support the conclusion of the trial court that at the time of the termination proceeding, the children were neglected under N.C. Gen. Stat. § 7B-1111. At the time of the termination hearing, the respondent had continued to engage in drug activity that led to a new conviction and his incarceration. In addition to respondent's failure to change his lifestyle, the children suffered from their parent's neglect, especially the oldest child, who was diagnosed with attachment issues. We therefore conclude that the trial court's findings of facts were based on clear, cogent, and convincing evidence and thus, the trial court properly found that respondent had neglected the minor children.

While it is dispositive that the record shows that at least one of the grounds for termination of parental rights was met², neglect, we observe further that the record supports the trial court's finding that respondent failed to contribute to the cost of care in the six months next preceding the filing of the petition although he was financially and physically able to do so.

N.C. Gen. Stat. § 7B-1111(a)(3) (2001) provides that:

The [children] ha[ve] been placed in the
custody of a county department of social

²Under N.C. Gen. Stat. § 7B-1110(a) (2001), if the trial court determines that one or more of the grounds are met, "the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights . . . not be terminated." N.C. Gen. Stat. § 7B-1110(a) (2001); see also *In re Swisher*, 74 N.C. App. 239, 240, 328 S.E.2d 33, 35 (1985).

services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parents, for a continuous period of six months next preceding the filing of the petition or motion, and ha[ve] willfully failed . . . to pay a reasonable portion of the cost of care for the [children] although physically and financially able to do so.

"Under section 7B-1111(a)(3), the trial court is required to make findings of fact concerning the parent's ability to pay and the amount of the child's reasonable needs." *In re Anderson*, ___ N.C. App. ___, 564 S.E.2d 599, 603 (2002).

In its findings of facts the trial court stated that:

12. Since October 29, 1999, the CCDSS has expended \$17,748.69 for the children's cost of care. Mr. Gray did not make any contributions towards the cost of care during the time the children have been in the CCDSS' custody.

14. Mr. Gray worked from April 1999 through July 2000 installing car stereos. He made from \$100.00 to \$300.00 on average but sometimes did not earn anything. He also earned money from the sale of illegal drugs. He has earned \$0.40 per day since his incarceration. He has had two infractions since being incarcerated.

These findings of fact are sufficient because "[t]his Court has held that under such circumstances, the trial court need not make detailed findings as to the amount that would be 'reasonable' to expect from respondent." *In re McMillon*, 143 N.C. App. 402, 411, 546 S.E.2d 169, 175 (2001); see also *In re Huff*, 140 N.C. App. at 293, 536 S.E.2d at 842. We likewise find that the record supports the conclusion that respondent willfully failed to make any financial contribution to the minor children despite having the resources to do so.

Finally, we address whether the trial court abused its discretion in determining that it was in the best interest of the children to terminate the respondent's parental rights. After the trial court has determined grounds exist for termination of parental rights at adjudication, the court is required to issue an order of termination in the dispositional stage, unless it finds the best interests of the child would be to preserve the parent's rights. See *In re Parker*, 90 N.C. App. 423, 368 S.E.2d 879 (1988). If the court determines that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated. N.C. Gen. Stat. § 7B-1110(a) (2001). As long as there is competent evidence to support the trial court's findings of fact, its determination regarding the child's best interests cannot be upset absent a manifest abuse of discretion. See *King v. Allen*, 25 N.C. App. 90, 92, 212 S.E.2d 396, 397, cert. denied, 287 N.C. 259, 214 S.E.2d 431 (1975).

Respondent argues that testimony at the hearing indicated that the children would benefit from the family remaining together and cites examples of respondent's love for his children as evidence the trial court abused its discretion. However, the evidence presented by the petitioner supports the trial court's conclusion that termination of respondent's parental rights is in the

children's best interest. The record shows that respondent failed to comply with court orders, and to make adequate improvement in the issues that led to the children's removal. Respondent continued to engage in criminal activity after his children were removed from his custody and was convicted of possession for intent to sell and deliver marijuana and maintaining a dwelling for the purpose of the sale of drugs. At the time of the termination hearing, respondent was serving time for a probation violation for those convictions. The record further shows that all of the children have suffered from respondent's neglect, the oldest child has been diagnosed with attachment issues and all three have significant developmental delays.

"Although severing parental ties is a harsh judicial remedy, the best interests of the children must be considered paramount," *In re Adcock*, 69 N.C. App. 222, 227, 316 S.E.2d 347, 350 (1984), which is the polar star by which the discretion of the court is guided. *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984). In the present case, there is competent evidence to support the trial court's findings of fact and conclusions of law; moreover, there is nothing in the record which requires us to upset the exercise of the trial court's discretion. *King v. Allen*, 25 N.C. App. at 92, 212 S.E.2d at 397. Thus, we reject this assignment of error.

For the reasons stated above, we affirm the trial court's order of termination of respondent's parental rights.

Affirmed.

Judges HUDSON and CAMPBELL concur.

Report per Rule 30(e).