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NO. COA01-1280

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

IN THE MATTER OF:  
DARIANNA CHEYENNE DEGUZMAN

Caldwell County  
No. 00 J 16

Appeal by respondent from order entered 11 January 2001 by Judge L. Suzanne Owsley in Caldwell County District Court. Heard in the Court of Appeals 13 June 2002.

*Elizabeth M. Spillman for petitioner-appellee Caldwell County Department of Social Services.*

*Joseph C. Delk, III, for respondent-appellant.*

MARTIN, Judge.

Respondent Betty Renee DeGuzman appeals from an order terminating her parental rights with respect to her minor daughter, Darianna Cheyenne DeGuzman. We affirm.

The Caldwell County Department of Social Services ("petitioner" or "DSS") filed a petition on 27 January 2000 alleging that the minor child, who was born 4 January 2000, was a neglected and dependent juvenile. An adjudication of neglect and dependency was entered 1 March 2000, and the minor child was placed in petitioner's custody on 24 May 2000. On 19 July 2000, after a permanency planning review hearing, the trial court found that returning the juvenile to respondent's home would be "contrary to

the safety, health and best interest of the child." The child's father, who is not a party to this appeal, signed a voluntary relinquishment of his parental rights on 25 July 2000.

On 23 August 2000, petitioner filed its petition for termination of respondent's parental rights. The evidence presented at the 3 January 2001 termination hearing tended to show that respondent used crack cocaine and alcohol through much of her pregnancy, and resumed her use of cocaine after the minor child was born. Following the 1 March 2000 adjudication that the minor child was neglected and dependent, respondent was ordered to complete a nurturing program and a psychological assessment, and to attend AA and NA meetings. Respondent did not complete the nurturing program, did not appear for her psychological evaluation, and missed several scheduled AA and NA meetings. Between May 2000 and the 3 January 2001 hearing, respondent contacted the Department of Social Services only once to request a visit with the minor child. Respondent made no other attempt to visit the juvenile, nor did she pay any child support. Respondent testified that she had been arrested for two incidents of driving while impaired in June 2000; neither case had been finally disposed of at the time of the hearing.

The trial court found, *inter alia*, the following facts by clear and convincing evidence:

. . .

2. The direct circumstances which brought the juvenile into the care of the Department of Social Services were that the Respondent, mother, after an adjudication of neglect and dependency, and efforts by the Department to

work with the Respondent, mother, to correct the problems which resulted in the adjudication had left the juvenile in the care of an unrelated party and had no further contact with her.

3. The Respondent, mother, has a lengthy history of substance abuse and has treated at an in-patient facility three times previously, but following each such treatment she has returned to abusing alcohol and controlled substances.

4. The Respondent, mother, did appear at the Adjudication Hearing in this matter at which time she stipulated and admitted that the allegations of the petition were true and therefore the child was neglected and dependent. The Respondent, mother, did not appear for any subsequent hearing in the matter until appearing today for the hearing on the petition to terminate her parental rights.

5. The Respondent, mother, has failed to comply with the prior Court orders regarding her treatment plan; she has failed to comply with the requirement to attend NA/AA; she has failed to successfully complete nurturing classes which were determined to be necessary to allow her to learn how to appropriately parent the minor child; and she failed to obtain a psychological evaluation as ordered by the Court.

6. The Respondent, mother, tested positive for cocaine in May, 2000, during the pendency of the case; further, the Respondent mother has used alcohol and marijuana since the positive drug screen in May, 2000.

7. The Respondent, mother, has worked sporadically though she is presently employed at Wendy's where she has worked since November, 2000.

8. The Respondent, mother, has previously neglected the minor child and continues to do so at this time. She has made no inquiry regarding her daughter since May, 2000, except for one time following the service on her of the termination of parental rights petition in

November, 2000.

9. The Respondent, mother, appeared bruised and bloody at the placement for her daughter in May, 2000 in an attempt to see her daughter but she offered no explanation of what had caused her injuries and was refused access to her daughter at that time. She made no further inquiry of the Department of Social Services regarding visitation with her child.

12. Since . . . the service of the termination of parental rights petition the Respondent, mother, did seek employment and did begin attending NA/AA missing only a few meetings due to work or transportation issues. The Respondent, mother, claims to be substance free and further claims that she has been substance free since . . . November . . . but she offers no verification of this claim.

13. The Respondent, mother, as of the date of this hearing, has not scheduled a psychological evaluation, has not scheduled in-patient treatment for her substance abuse problems; has not scheduled to participate in Nurturing Classes or taken any other steps to comply with the prior orders entered by this Court.

14. On December 14, 2000, the Respondent, mother, did contact the Department of Social Services in an attempt to arrange a visit with the minor child but was advised that a visit could not be scheduled. Since Christmas, the Respondent, mother, did send a Christmas present for the minor child through a third party. These were the only such attempts made by the Respondent, mother, throughout the pendency of the action regarding the welfare of the minor child.

15. The Respondent, mother, has paid no child support for the benefit of the minor child though she is able-bodied, capable of providing support and has been employed since November, 2000 and had the financial means to do so. There was no obligation established which would have established an amount of support due from the Respondent, mother.

The trial court concluded, *inter alia*:

. . .

4. That the juvenile is and was a neglected child within the meaning of the N.C.G.S. § 7B-101(15). Respondent parent neglected the juvenile which resulted in her custody being placed with the Caldwell County Department of Social Services and that such neglect of the juvenile continues to exist at the time of this hearing.

5. That the juvenile is and was a dependent child within the meaning of the N.C.G.S. § 7B-101(9). Respondent mother allowed the child to be determined to be a dependent child and subsequently left her in the care of an unrelated third party when the Respondent mother relapsed in her use of illegal substances which resulted in the child being placed in the custody of the Caldwell County Department of Social Services and that such dependency continues as of the time of the hearing in this matter.

. . .

8. That the Respondent, mother, has left the juvenile in foster care since May, 2000 without correcting the conditions which resulted in the juvenile being placed in foster care; that she did not initiate any contact with the Department and the Department had no formal address for her, that she abandoned the juvenile and that she previously failed to provide proper care, supervision, housing, education and nurture for the juvenile.

Therefore the Court concludes as a matter of law that grounds exist pursuant to N.C.G.S. § 7B-1111(1) and (6) to terminate the parental rights of Betty Renee DeGuzman in and to her minor child, Darianna Cheyenne DeGuzman.

The trial court determined that the best interests of the minor child would be served by the termination of respondent's parental

rights.

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Appellate review of an order terminating one's parental rights requires the reviewing court to determine whether the trial court's findings are supported by clear, cogent, and convincing evidence, and whether those findings support the trial court's conclusion of law that grounds for termination exist. *In re McMillon*, 143 N.C. App. 402, 546 S.E.2d 169, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001). If so, the decision as to whether to terminate parental rights is discretionary. *In re Montgomery*, 311 N.C. 101, 316 S.E.2d 246 (1984). The burden of proof in termination of parental rights cases is on the petitioner, who must prove facts justifying termination with "clear and convincing evidence." N.C. Gen. Stat. § 7B-1111(b) (2001). If the petitioner carries its burden, the trial court must then determine if termination is in the best interests of the child. *McMillon*, 143 N.C. App. at 408, 546 S.E.2d at 174. The trial court "has discretion, if it finds that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the child's best interests." *Id.* (citations omitted); See also N.C. Gen. Stat. § 7B-1110(a) (2002). The trial court's decision to terminate parental rights is reviewed for abuse of discretion. *McMillon*, *supra*. It is fundamental that the scope of appellate review "is confined to a consideration of those assignments of error set out in the record on appeal." N.C.R. App. P. 10(a); *Koufman v. Koufman*, 330 N.C. 93, 408 S.E.2d 729 (1991). In the present case,

respondent's sole assignment of error reads:

Respondent mother assigns as error:

1. The Court's Conclusion of Law No. 8, on the ground that there are no Findings of Fact which support the conclusion that the Respondent Mother's parental rights should be terminated.

In her brief, however, respondent attempts to argue that the trial court's findings of neglect and dependency are not supported by clear, cogent, and convincing evidence. We will not consider the argument, because respondent has not assigned error to any of the trial court's findings of fact and they are, therefore, deemed to be supported by clear, cogent, and convincing evidence and are conclusive on appeal. *In re Tyson*, 76 N.C. App. 411, 333 S.E.2d 554 (1985). Thus, we review only the issues of whether the findings support the trial court's conclusion that grounds exist to terminate respondent's parental rights and its discretionary decision that such termination is in the best interests of the minor child.

G.S. § 7B-1111(a) provides that the trial court "may terminate the parental rights upon a finding of one or more of the following:"

(1) The parent has abused or neglected the juvenile. 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.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable

probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

G.S. § 7B-101(15) defines "neglected juvenile" in part as one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned . . . ." A "dependent juvenile" is one

in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9).

The trial court's findings of respondent's substance abuse, her failure to comply with the trial court's orders regarding treatment to enable her to resume her parenting responsibilities, her leaving the child in the care of an unrelated party and making no inquiry concerning the child for an extended period of time, and her minimal attempts to make contact with and visit the child support its conclusions that the child was both neglected and dependent within the meaning of the statutes. Furthermore, in view of our review of the testimony in this case; the trial court's findings, all of which are conclusively deemed to be supported by clear, cogent, and convincing evidence; and our determination that the trial court properly concluded that grounds for termination existed, we discern no abuse of discretion in the trial court's determination that it was in the minor child's best interests that



respondent mother's parental rights be terminated. The order of the trial court is affirmed.

Affirmed.

Judges TYSON and THOMAS concur.

Report per Rule 30(e).