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NO. COA01-1393

NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2002

IN THE MATTER OF:
TRAVIS ALLEN OXENDINE,
a minor child.
Anson County Department of
Social Services,

Petitioner,

Anson County
No. 98-J-63

v.

MICHELLE OXENDINE and
JOHNNY OXENDINE,

Respondents.

Appeal by respondents from orders entered 5 June 2001 by Judge Christopher Bragg in Anson County District Court. Heard in the Court of Appeals 11 June 2002.

Paul S. Prelipp for petitioner-appellee.

James V. Carneval and Melanie Wade Goodwin for respondents-appellants.

TIMMONS-GOODSON, Judge.

Michelle Oxendine and Johnny Oxendine ("respondents"), the natural parents of Travis Allen Oxendine ("Travis"), appeal from an order adjudicating Travis neglected and awarding custody of Travis to the Anson County Department of Social Services ("DSS") and an order terminating parental rights. For the reasons stated herein, we affirm the orders of the trial court.

On 18 January 2000, DSS filed a petition alleging Travis had been neglected by respondents and a second petition requesting that the parental rights of respondents be terminated based on neglect. On 6 September 2000 and 20 September 2000, the petition alleging neglect and the petition for termination of parental rights were heard before the trial court. The evidence presented before the proceeding revealed that Travis was suffering from numerous health problems including: a tumor located on his leg, a kidney condition, cerebral palsy, and rhabdomyosarcoma, a form of cancer of the soft tissue. The cancer required continuous treatment, several surgeries, chemotherapy and radiation therapy. Daniel McMahon, M.D. ("Dr. McMahon"), the treating pediatric oncologist for Travis, developed and implemented a course of treatment for Travis. Dr. McMahon met personally with respondents and stressed the importance of proper nutrition in order for Travis to maintain his weight and strength. He also informed the respondents that that it was imperative that Travis attend his regularly scheduled appointments for treatment. Despite this information, Travis suffered an extreme amount of weight loss, dehydration, weakness and often came to the hospital "very dirty." Travis had also missed several of his scheduled treatment appointments. On 25 November 1998, Travis was hospitalized for several weeks to regain weight and strength before he could resume chemotherapy. Jennifer Horsley, a medical social worker, had numerous conversations with respondents about Travis' missed appointments and referred the matter to DSS in response to respondents' non-compliance with the

treatment plan. On 27 November 1998, DSS filed a petition for neglect. Thereafter, Travis was placed in foster-care.

On 10 March 1999, respondents stipulated to a finding of medical neglect. On 18 January 2000, DSS filed a petition for termination of parental rights. Based on the evidence presented at the termination hearing, the trial court made the following pertinent findings of fact:

51. That on March 10, 1999 Johnny and Michelle Oxendine by and through their attorneys in open court stipulated as to a finding of medical neglect as alleged in the Petition dated November 27, 1998.

54. That the parents of the minor child have up until the date of this hearing continued to miss necessary medical appointments for their minor child with no back up plan in place.

58. That due to the parent[s'] lack of reliability, the foster mother took over the responsibility of taking the minor child to all of his doctor's appointments and treatments in Charlotte. That upon the foster mother's assumption of these duties the child never missed an appointment and responded well to the therapy provided to him.

65. That with the exception of one fifty dollar payment the parents of the minor child, Travis Allen Oxendine, have not paid a reasonable portion of the cost of the care for their minor child although physically and financially able to do so.

69. That the ability of the mother and father to understand the severity of their son's condition and course of care is questionable.

70. That the mother and father were not able to carry through with the child's treatment regimen or with the Family Services Case Plan even after the minor child was removed from the home.

72. That on June 23, 1999, this Court

relieved the Department of Social Services from further efforts to reunify the minor child with his parents, Johnny and Michelle Oxendine, since the respondent parents had not made substantial progress in correcting the conditions which led to the removal of the minor child from his home on November 27, 1998; that the Department of Social Services has used reasonable efforts to provide reunification services with the minor child and the Respondent parents to no avail.

77. That the foster mother has spent an enormous amount of time with the minor child and has been an incredible influence on the child's progress.

79. That the minor child is thriving in foster care and has completed his cancer treatment which will require close follow up and monitoring.

82. That neither parent has contacted the physician to inquire about Travis' medical condition and the mother has called only two times since September 1999 to inquire about Travis' medical condition.

83. That the Respondent mother is seen regularly at the Department of Social Services and does not inquire about the medical welfare of her child.

Based on the above-stated findings, the trial court concluded that: (1) respondents willfully left the minor child in foster care for more than twelve months without showing to the satisfaction of the Court reasonable progress under the circumstances has been made within twelve months in correcting those conditions which led to the removal of Travis; (2) respondents failed to provide the minor child with proper care and supervision in that he was not provided necessary medical care with respect to his ongoing medical needs and treatments. Further, that there is a high probability of repetition of neglect and strong likelihood that such conditions

will continue for the foreseeable future and have continued through the time of this hearing; and (3) it was in the best interests of the minor child for respondents' parental rights to be terminated. The trial court therefore terminated respondents' parental rights as to Travis on 5 June 2001. Respondents appeal from this order.

In their first assignment of error, respondents contend that the trial court erred by finding medical neglect sufficient to support termination of parental rights. We disagree.

The termination of parental rights statute provides for a two-stage termination proceeding: the adjudication stage and the disposition stage. *In re Young*, 346 N.C. 244, 247, 485 S.E.2d 612, 614 (1997). "At the adjudication stage, the party petitioning for termination of parental rights must demonstrate by clear, cogent, and convincing evidence that one or more of the grounds warranting termination, as set forth in section 7A-289.32 of our North Carolina General Statutes, exist." *In re Leftwich*, 135 N.C. App. 67, 71, 518 S.E.2d 799, 802 (1999). If one or more of the grounds for terminating parental rights are shown, the court moves to the disposition stage to determine whether it is in the best interests of the child to terminate parental rights. *Id.* Our standard of review in termination of parental rights cases is whether the "court's findings of fact are based upon clear, cogent, and convincing evidence" and whether the "findings support the conclusions of law." *In re Allred*, 122 N.C. App. 561, 565, 471 S.E.2d 84, 86 (1996). If the trial court's decision is supported

by the evidence, the findings are binding on appeal, even if there is evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988).

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2001), a court may terminate parental rights upon a finding that the parent has neglected his or her child. Neglect, within the meaning of N.C. Gen. Stat. § 7B-101(15) (2001), constitutes one of the grounds that may support termination of parental rights. A "neglected juvenile" 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;

N.C. Gen. Stat. § 7B-101(15).

Respondents argue that the trial court erred by finding neglect sufficient to support termination of parental rights absent evidence showing neglect at the time of the termination proceeding. Respondents argue that the trial court did not consider the improvements in Travis' medical condition at the time of the termination proceeding. We disagree.

"A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *Young*, 346 N.C. at 248, 485 S.E.2d at 615. A "trial court's order must reflect that the termination of parental rights for neglect was based on an independent determination of existing neglect or a determination that

conditions exist which will in all probability precipitate a repetition of neglect." *In re Stewart Children*, 82 N.C. App. 651, 654, 347 S.E.2d 495, 497 (1986). The determinative factors must be the "best interests of the child, and the fitness of the parent to care for the child at the time of the termination proceeding." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (alteration in original).

In the instant case, the trial court's conclusion that grounds existed for termination of respondents' parental rights was supported by the record. The trial court properly considered both evidence of neglect by respondents prior to losing custody of Travis as well as evidence of conditions since that time, revealing a likelihood of neglect in the future. The record is replete with evidence that respondents have not accepted the responsibility needed to provide the care, support, and medical support that Travis requires in light of his present health conditions. The trial court specifically found:

54. That the parents of the minor child have up until the date of this hearing continued to miss necessary medical appointments for their minor child with no back up plan in place.

55. That Johnny and Michelle Oxendine have never been able to articulate any sort of back up plan for Travis's care and treatment despite the urging and assistance of the Department of Social Services.

60. That the parents have been very inconsistent with visitation and do not normally call to check on Travis or his current health status.

69. That the ability of the mother and father to understand the severity of their son's

condition and course of care and treatment is questionable.

74. That the parents have not taken the initiative in connection with the reunification with the child and that they are dependent on others concerning the care of their child.

80. That the minor child will need continued special assistance, speech therapy, mentoring, monitoring and follow up care for the rest of his life.

82. That neither parents has contacted the physician to inquire about Travis' medical condition and the mother has called only two times since September 1999 to inquire about Travis' medical condition.

Based upon these findings, the trial court properly concluded that neglect existed at the time of the proceeding and that there was a reasonable probability and strong likelihood that such conditions would continue in the future. We therefore hold that the trial court made a determination, independent of the prior stipulation and adjudication of neglect, that termination of parental rights was in the best interest of the child at the time of the hearing.

In their next assignment of error, respondents contend that the trial court erred by allowing evidence of respondents' community fund-raising efforts for the benefit of Travis. This argument is without merit.

Respondents dispute the relevance and prejudicial nature of the testimony by Mary Kendall, a DSS Child Protective Services supervisor, which led the court to enter the following findings of fact:

66. That the parents of the minor child distributed donation cans at local convenience stores seeking money to help a family with a sick child. None of the monies collected were ever paid to support their minor child, Travis Allen Oxendine.

67. That in addition to their minor child, Travis Allen Oxendine, the Oxendines had their other six children living in the home.

N.C. Gen. Stat. § 8C-1, Rule 401 (2001) defines relevant evidence as "evidence having any tendency to make the existence of any fact of consequence to the determination of the action more probable or less probable than it would be without the evidence." In the instant case, DSS petitioned the court to terminate parental rights on the grounds of neglect as well as the respondents' willful "failure to pay a reasonable portion of the costs of care of the child while in custody of the Anson County Department of Social Services although the parents were physically and financially able to do so." Clearly, the evidence is relevant as it tends to show that respondents had the opportunity to pay a reasonable portion of the costs of Travis' care, even through funds of another source, and failed to do so. However, we note that even if the testimony was not relevant, it was not prejudicial since the trial court's findings support termination of respondents' parental grounds based on grounds of neglect. This assignment of error is therefore overruled.

By their next two assignments of error, respondents contend that the trial court erred when it concluded that their parental rights should be terminated pursuant to section 7B-1111(a) of our statutes because: (1) respondents "willfully left the [minor child]

in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress" had been made in correcting conditions that led to the minor child's removal and (2) respondents have willfully failed for a "continuous period of six months next preceding the filing of the petition" to "pay a reasonable portion of the cost of care for the [minor child] although physically and financially able to do so." However, this Court has held that "a valid finding on one statutorily enumerated ground is sufficient to support an order terminating parental rights." *Stewart*, 82 N.C. App. at 655, 347 S.E.2d at 498. Since we have determined that the trial court's findings support termination of respondents' parental rights based on grounds of neglect, "we need not address the respondents' assignments of error challenging the sufficiency of the evidence to terminate, based on other statutory grounds." *Id.*

In conclusion, we hold that the trial court's findings of fact were supported by the evidence, and that the trial court's conclusions were supported by the findings of fact. We therefore affirm the order of the trial court.

Affirmed.

Judges GREENE and HUNTER concur.

Report per Rule 30(e).