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NO. COA02-102

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

IN THE MATTER OF:

Durham County
No. 98 J 147

DONETTA McBROOM

Appeal by respondent-father from order entered 31 October 2001 by Judge Kenneth C. Titus in Durham County District Court. Heard in the Court of Appeals 30 September 2002.

Assistant County Attorney Cathy L. Moore for petitioner-appellee Durham County Department of Social Services.

Hosford & Horsford, P.L.L.C. by Geoffrey W. Hosford, for respondent-father Howard McBroom.

Sonya M. Calloway, for guardian ad litem.

BIGGS, Judge.

Howard McBroom (respondent) appeals an order terminating his parental rights as the putative father of Donetta McBroom, the minor child. Donetta McBroom was born on 1 September 1993. On 29 September 2000, the Durham County Department of Social Services (DSS) filed a petition to terminate the parental rights of respondent and Shirley McKinney, the mother of the minor child. Petitioner specifically alleged that respondent had: (1) neglected the minor child; (2) willfully left the minor child in foster care for more than twelve months without showing any reasonable progress

under the circumstances within the twelve months which led to the minor child's removal; (3) failed to pay a reasonable portion of support for the minor child for a continuous period of six months after the minor child had been placed in the custody of DSS; and (4) had not established paternity, legitimated the child, or provided substantial financial support to the child and mother. Respondent answered denying the material allegations on 12 September 2001. On 31 October 2001, the trial court terminated respondent's parental rights based on the statutory grounds set forth in N.C.G.S. §§ 7B-1111(a)(1), and (2)(2001). The minor child's mother signed a relinquishment of her parental rights. Respondent appeals from the order terminating his parental rights.

Respondent assigns as error the trial court's conclusion that there was clear, cogent, and convincing evidence to support a termination of his parental rights under either N.C.G.S. § 7B-1111 (a)(1) or (a)(2). We find the evidence sufficient to support the order terminating parental rights and affirm the decision of the trial court.

N.C. Gen. Stat. § 7B-1111 provides nine separate grounds upon which an order terminating parental rights may be based. A court's finding of one of the statutory grounds for termination, if supported by competent evidence, will support an order terminating parental rights. *In re Nolen*, 117 N.C. App. 693, 453 S.E.2d 220 (1995). The trial court's decision to terminate parental rights is reviewed on an abuse of discretion standard. *In re Allred*, 122

N.C. App. 561, 471 S.E.2d 84 (1996).

A trial court may terminate parental rights under N.C.G.S. § 7B-1111(a) (1) upon a finding that:

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.

N.C.G.S. § 7B-1111(a) (1). A neglected juvenile is defined as:

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.

N.C.G.S. § 7B-101(15) (2001).

In support of its conclusion that respondent's parental rights should be terminated pursuant to N.C.G.S. § 7B-1111(a) (1), the trial court entered the following order in pertinent part:

BASED UPON THE EVIDENCE PRESENTED,
BY CLEAR, COGENT AND CONVINCING EVIDENCE
THE COURT MAKES THE FOLLOWING FINDINGS OF FACT:

. . . .

3. Howard McBroom is the putative father of the child, Donnetta McBroom. The summons and petition for termination of parental rights were served in the following manner: service by certified mail. An Answer was filed.

4. The child has been in the custody of the Durham County Department of Social Services (hereinafter Durham DSS) since July 28, 1999. The child has remained continuously

in foster care up to the hearing on this date.

5. The father has neglected the child and the child is a neglected child within the meaning of G.S. 7B-101(15). The father is in prison and cannot provide a proper home or proper care for the child now. He has been in prison since August 27, 1997 and his projected release date is November 22, 2005, when the child will be twelve (12) years old. He is unable to make a plan of care for his child with paternal relatives or friends. While there is conflicting testimony, it is clear that the last time Mr. McBroom saw Donetta was in 1994 when she was one year old. He had abandoned her prior to his incarceration.

Respondent did not except to any of these findings, and they are presumed to be correct and supported by the evidence. *In re Moore*, 306 N.C. 394, 293 S.E.2d 127 (1982), *appeal dismissed*, 459 U.S. 1139, 74 L. Ed. 2d 987 (1983). Nevertheless, we have examined the record and determined that these findings are based upon orders entered in the case and the testimony of respondent. Accordingly, we find the trial court's findings are supported by clear, cogent and convincing evidence. Furthermore, we hold that these findings support the court's conclusion that Howard McBroom was subject to having his parental rights terminated pursuant to N.C.G.S. § 7B-1111 (a) (2). *See, e.g., In Re Blackburn*, 142 N.C. App. 607, 543 S.E.2d 906 (2001) (court terminated mother's parental rights based on neglect where mother was incarcerated and would have been unable to care for child for a few years, child was living in home with alleged crack cocaine addict, and person with whom mother left child could not continue to care for child).

Respondent also assigns error to the trial court finding that it was in the minor child's best interest to terminate his parental

rights. Respondent, citing *In Re Mitchell*, 148 N.C. App. 483, 559 S.E.2d 237 (2002), argues that the trial court improperly shifted the burden of proof to him to show why termination was not in the minor child's best interest.

In *Mitchell*, the trial court required the mother "to rebut this presumption [that termination was in the best interests of the children] with some evidence." *Id.* at 491, 559 S.E.2d at 242. This case is distinguishable from *Mitchell*. After finding grounds to terminate respondent's parental rights, the trial court here stated:

Well, the way the statute is written is sort of a double-negative kind of thing. The Court has to, has to, if the grounds are found, terminate parental rights unless it's shown to be contrary to the best interest of the child.

So it's not that the Department or anybody else has any obligation to show that it's in the best interest to terminate, the statute says it is in the best interest to terminate if the grounds exist, unless there is evidence showing that it is not.

Unlike *Mitchell*, the trial court did not state that the respondent had to show it was not in the best interest to terminate nor did it give the parties an opportunity to present any further evidence during disposition. Furthermore, respondent fails to show, nor do we find, that the trial court abused its discretion in terminating respondent's parental rights. See *Dept. of Social Services v. Roberts*, 22 N.C. App. 658, 207 S.E.2d 368 (1974).

Because we have determined that one of the grounds set forth in N.C.G.S. § 7B-1111 supports the trial court's order, we need not

address respondent's challenge to the trial court's termination on other grounds. See *In re Allred*, 122 N.C. App. at 569, 471 S.E.2d at 88. Accordingly, the trial court's order terminating respondent's parental rights is affirmed.

Affirmed.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).