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NO. COA02-003

NORTH CAROLINA COURT OF APPEALS

Filed: 01 October 2002

IN THE MATTER OF:
AREANNA DESHAUN GRAHAM

Mecklenburg County
No. 00 J 1217

Appeal by respondent from order entered 12 July 2001 by Judge Elizabeth M. Currence in Mecklenburg County District Court. Heard in the Court of Appeals 30 September 2002.

Associate County Attorney Tyrone C. Wade, for petitioner-appellee Mecklenburg County Department of Youth & Family Services.

Crews & Klein P.C., by Katherine Freeman, and Sheila G. Passenant, Attorney Advocate, Guardian ad Litem Program, for appellee Guardian ad Litem.

Joseph F. Dodge for respondent-appellant Felicia Graham.

THOMAS, Judge.

Respondent, Felicia Graham, appeals from the order terminating her parental rights to her daughter Areanna Deshaun Graham.

Petitioner Mecklenburg County Department of Social Services (DSS) has moved to dismiss the record on appeal based on Graham's failure to comply with the requirements for proceeding on appeal *in forma pauperis*, as prescribed by N.C.R. App. P. 6(b) and N.C. Gen. Stat. § 1-288 (1999). Although noncompliance with Rule 6(b) is a jurisdictional defect, we elect to treat Graham's appeal as a petition for writ of certiorari, thereby mooting the motion to

dismiss. See *Matter of Johnson*, 70 N.C. App. 383, 386, 320 S.E.2d 301, 304 (1984).

Areanna was born on 13 May 1998. Paternity has not been determined. Areanna was placed in foster care upon an adjudication of neglect and dependency on 5 April 2000. In a 3 May 2000 dispositional order, Graham was directed to undertake domestic violence counseling through the Women's Commission, submit to a substance abuse assessment and psychological evaluation, and follow the case plan and recommendations of DSS's Division of Youth and Family Services.

Graham failed to attend a 12 July 2000 review hearing but was represented by counsel. The court found that Graham had not complied with the requirements of her case plan and that her address was unknown. She was ordered to provide financial information within thirty days to allow the court to assess care or support payments.

Graham again failed to attend a review hearing on 10 October 2000. The court found she had not attended her scheduled visitations with Areanna and suspended further visits until Graham appeared in court.

The petition to terminate Graham's parental rights was filed on 5 December 2000, on the following grounds: (1) Graham neglected Areanna; (2) Graham willfully abandoned Areanna for at least six consecutive months; (3) Graham willfully failed to pay a reasonable portion of the cost of Areanna's foster care for a continuous period of more than six months; and (4) Graham was incapable of

providing for the proper care and supervision of Areanna and such incapacity was reasonably likely to continue for the foreseeable future. See N.C. Gen. Stat. §§ 7B-1111(a)(1), (3), (6), (7) (1999).

Graham did attend a review hearing 31 January 2001. The court advised her that she could "do the things previously ordered by the court" and that "her efforts will be considered" at the termination hearing. She was denied further visitation with Areanna.

The hearing on DSS's petition was held 11 April and 24 May 2001. The trial court entered an order terminating Graham's parental rights on the four grounds alleged in the DSS petition. The order contains the following findings of fact based on "clear, cogent and convincing evidence[:]"

3. That the juvenile was placed in the custody of [DSS] on February 3, 2000 and adjudicated a neglected and dependent juvenile on April 5, 2000.

4. That at the time the juvenile was placed in the custody of [DSS], she, along with an older sibling, had resided with the mother along with the mother's domestic partner in an environment where there was domestic violence.

8. That after DSS became involved in Gaston County, the mother relocated to Mecklenburg County. The case was transferred to Mecklenburg and thereafter DSS in Mecklenburg began to provide services for respondent and the children.

9. That respondent mother failed to cooperate with the recommendations of [DSS] and this juvenile along with an older sibling were eventually removed from the home

10. That prior to relocating to Mecklenburg County, respondent mother had left the juveniles with a relative on July 2, 1999 and

did not reappear until October of that year.

11. That during her period of absence, the mother did not contact the relative or inquire as to the welfare of the juveniles.

15. That the mother re-appeared in October and asked that the juveniles be returned to her care; however, due to the mother's living environment and the concerns of the relative, she refused the request. The mother admitted she had used controlled substances and was dancing as a stripper during her absence.

16. That the children were later returned to the mother

17. That it was thereafter that the mother . . . relocated to Mecklenburg County.

18. That after the petition was filed in Mecklenburg County, DSS developed a case plan to work toward reunification.

19. That several issues were included in the case plan by the Department. [Graham] was to obtain an assessment at the McLeod Center and follow any recommendations, obtain a psychological evaluation and participate in domestic violence counseling. She was to visit on a regular and consistent basis . . .
.

20. That the mother failed to fully comply with the recommendations of [DSS]. She stopped attending visits and her whereabouts became unknown. There was no contact for a significant period of time and her visits were suspended.

21. That [Graham] reappeared in December, 2000 after the termination petition had been filed.

22. That [Graham] began domestic violence counseling, but failed to follow through and complete the program.

23. That there is credible evidence that [Graham] is engaged in pornographic behavior and does not have the ability to provide the necessary care the juvenile needs. [Graham]

denied credible evidence to the contrary and the Court does not find the mother's testimony credible based upon the totality of the evidence presented.

24. That respondent mother has not maintained consistency in employment or housing. She was employed for a period of time and quit her job, but offered no credible evidence for why she quit the job to take a lesser paying job. The testimony from the social worker is that respondent mother was fired.

26. That no one has contacted the agency inquiring as to the welfare of the juvenile.

27. That it has cost \$6,500 each year to maintain the juvenile in foster care.

28. That respondent parents have paid nothing to defray the cost of maintaining the juvenile in foster care.

The court concluded that each of the grounds for terminating Graham's parental rights alleged by DSS existed, as follows:

6. . . . [R]espondent [has] neglected the above named juvenile . . . as that term is defined by N.C.G.S. § 7B-101(15) in that [she] ha[s] failed to provide proper care, supervision and discipline for the juvenile

7. . . . [Areanna] has been placed in the custody of the Mecklenburg County [DSS] and respondent, . . . for a continuous period of more than six (6) months [] preceding the filing of this petition, ha[s] willfully failed for such period to pay a reasonable portion of the cost of care for said juvenile.

8. . . . [R]espondent [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 N.C.G.S. § 7B-101(9) and there is a reasonable probability that such incapability will continue for the foreseeable future.

9. . . . [R]espondent[has] willfully

abandoned the juvenile for at least six (6) consecutive months immediately preceding the filing of this petition

The court further concluded that termination of Graham's parental rights was in the best interest of Areanna.

In her brief to this Court, Graham asserts the trial court erred in finding that she had abandoned the child, that she had willfully failed to pay for the child's care, and that she was incapable of providing for the proper care and supervision of the child. Graham fails to address her assignment of error challenging the court's conclusion that she had neglected Areanna. Accordingly, her challenge to this conclusion of law is deemed abandoned. See N.C.R. App. P. 28(b)(6). Although this single ground for termination is sufficient to uphold the district court's order, we will consider an alternative ground on the merits. See *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990).

Graham has failed to except to any of the trial court's findings of fact, offering only broadside assignments of error claiming that the trial court erred in terminating her parental rights for neglect, for dependency, for abandonment, and for failure to pay a reasonable portion of the cost associated with Areanna's foster care. See *Matter of Caldwell*, 75 N.C. App. 299, 301-02, 330 S.E.2d 513, 515 (1985). Accordingly, the court's findings of fact are deemed conclusive and binding on appeal. *Id.* at 301, 330 S.E.2d 515 (citing *In re Apa*, 59 N.C. App. 322, 296 S.E.2d 811 (1982)). The question before us is whether the court's findings support its conclusions of law. *Id.*

As a ground for termination, the district court concluded that Graham "willfully failed for such period to pay a reasonable portion of the cost of care" for Areanna over a period of at least six months. N.C. Gen. Stat. § 7B-1111(a)(3). The court found that Graham "was employed for a period of time and quit her job, but offered no credible testimony for why she quit the job to take a lesser paying job." The court further found "[t]hat it has cost \$6,500 each year to maintain Areanna in foster care[,] and that Graham "ha[s] paid nothing to defray the cost of maintaining the juvenile in foster care." The court's findings are sufficient to support the conclusion that Graham had the ability to pay some amount more than zero and thus willfully failed to pay a reasonable portion of the cost of Areanna's foster care. See *In re McMillon*, 143 N.C. App. 402, 410-11, 546 S.E.2d 169, 175, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 341 (2001), (citing *In re Huff*, 140 N.C. App. 288, 292-93, 536 S.E.2d 838, 841-42 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001)). Indeed, Graham's appellate brief offers the following characterization of her "consistent employment" over the relevant period:

[Graham] was employed at a daycare center from October 10, 2000 until April 18, 2001 . . . As of the date of the first hearing on the termination petition, [Graham] had maintained continuous gainful employment for over seven months. In addition [Graham] was gainfully employed at Hardee's at the time of the second termination hearing.

While she emphasizes that the trial court never entered a support order, the record reflects her failure to supply the trial court

with the necessary financial information as ordered on 12 July 2001.

Because we find a basis for the termination of Graham's parental rights under N.C. Gen. Stat. § 7B-1111(a)(3), we need not address the remaining grounds found by the trial court. See *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34; *Matter of Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982), *appeal dismissed*, 459 U.S. 1139, 74 L. Ed. 2d 987 (1983).

Graham does not address her assignment of error regarding the finding that termination was in Areanna's best interests. Although we treat the assignment of error as abandoned pursuant to Rule 28(b)(6), we further find no abuse of discretion by the trial court. See *In re Brim*, 139 N.C. App. 733, 744, 535 S.E.2d 367, 373 (2000).

AFFIRMED.

Judges WALKER and BIGGS concur.

Report per Rule 30(e).