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NO. COA02-590

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

IN THE MATTER OF:

RICKY JOE GILLESPIE, Jr.,
CODY CHARLES GILLESPIE,
AARON MICHAEL GILLESPIE,
Minor Children.

McDowell County
Nos. 1999 J 43-44,
2000 J 22

Appeal by respondent from order entered 17 January 2002, *nunc pro tunc* 4 January 2002, by Judge C. Randy Pool in McDowell County District Court. Heard in the Court of Appeals 7 October 2002.

Goldsmith, Goldsmith & Dews, P.A., by James W. Goldsmith, for petitioner-appellee McDowell County Department of Social Services, and W. Hill Evans, P.A., by W. Hill Evans, for the Guardian Ad Litem.

Armando A. Rivera-Carretero for respondent-appellant.

EAGLES, Chief Judge.

Ricky Joe Gillespie ("respondent") appeals from an order terminating his parental rights. After careful consideration of the briefs and record, we affirm.

Respondent is the father of: Ricky Joe Gillespie, Jr. ("Ricky"), born 1 March 1998; Cody Charles Gillespie ("Cody"), born 20 February 1999; and Aaron Michael Gillespie ("Aaron"), born 20 March 2000. Ricky and Cody were adjudicated neglected and placed in the physical and legal custody of the McDowell County Department of Social Services ("DSS") after a hearing held on 27 July and 5

August 1999. In August 2000, Aaron was adjudicated neglected and placed in the physical and legal custody of DSS.

DSS filed a petition to terminate parental rights on 25 May 2001 alleging that: (1) Ricky and Cody had been adjudicated neglected juveniles after respondent had operated a motor vehicle while intoxicated and while the two minor children were present in the vehicle; (2) Aaron had separately been adjudicated a neglected juvenile; (3) respondent had willfully left the children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made towards correcting those conditions which led to their removal; and (4) respondent had failed to pay a reasonable portion of the cost of child care for the minor children in the six months preceding the filing of the petition, although physically and financially able to do so.

The matter was heard on 4 January 2002 in McDowell County District Court before Judge C. Randy Pool. On 17 January 2002, *nunc pro tunc* 4 January 2002, the trial court ordered that the parental rights of respondent should be terminated. Specifically, the trial court concluded as matter of law that respondent: (1) had willfully left the children in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress had been made towards correcting those conditions which led to their removal; (2) had failed to pay a reasonable portion of the cost of child care for the minor children in the six months preceding the filing of the petition, although

physically and financially able to do so; and (3) had neglected the children, and there was a reasonable likelihood that the neglect would reoccur in the future if any of the children were placed back with respondent. The trial court also concluded that the children were in need of permanent placement and would likely be adopted if cleared for adoption. Accordingly, the trial court determined that it was in the best interests of the children that respondent's parental rights be terminated. Respondent appeals.

Respondent argues that the trial court abused its discretion in terminating his parental rights. Respondent contends that "the fact that Appellant abuses alcohol, without proof of an adverse impact upon the children, is not a sufficient basis for termination of parental rights." Respondent further argues that "the trial court should have considered all intangible as well as the non-economic needs of the children . . . in determining whether or not it was in the children's best interests to terminate" respondent's parental rights.

G.S. § 7B-1111 sets out the statutory grounds for terminating parental rights. G.S. § 7B-1111(a) (2001) states:

(a) The 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.

(2) The parent has willfully left the juvenile in foster care or placement

outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, . . . and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

A finding of any one of the separately enumerated grounds is sufficient to support a termination of parental rights. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). Here, in its findings of fact, the trial court noted: (1) respondent's continued abuse of alcohol; (2) his sporadic attendance at Alcohol Anonymous meetings; (3) several instances of domestic violence between respondent and the children's mother; (4) respondent's failure to comply with court orders with regard to being "smoke free, washing their hands or wearing smoke free clothing when visiting with Aaron" whose physician directed that Aaron not be around any type of cigarette smoke due to respiratory problems; (5) respondent's failure to complete anger management therapy sessions and parenting classes; and, (6) that although able-bodied and employed, respondent had not paid any child support for the children since November 1999. The trial court concluded that

grounds existed pursuant to G.S. § 7B-1111(a)(1), (2) and (3) to support termination of respondent's parental rights.

Respondent does not challenge any of the court's findings of fact or conclusions of law other than the conclusion that termination of parental rights was in the children's best interests. Once the trial court has found that grounds exist to terminate parental rights, "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." G.S. § 7B-1110(a) (2001). The trial court's decision to terminate parental rights at the disposition stage is discretionary. *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). Here, the trial court concluded that the children were in need of a permanent home, that they were likely to be adopted, and that it was in the best interests of the children that respondent's parental rights be terminated. Based upon the facts in this case, we hold that the trial court did not abuse its discretion in determining that termination of respondent's parental rights was in the children's best interests. Accordingly, the order terminating respondent's parental rights is affirmed.

Affirmed.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).