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NO. COA08-588

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

IN THE MATTER OF:
A.B.T.

Haywood County
No. 04 JT 106

Appeal by respondent-mother from orders entered 22 February 2008, by Judge Richlyn D. Holt in Haywood County District Court. Heard in the Court of Appeals on 15 September 2008.

Court of Appeals

Ira L. Dove for Haywood County Department of Social Services petitioner-appellee.

The Turrentine Group, PLLC, by Karlene S. Turrentine, for respondent-mother appellant.

Parker Poe Adams & Bernstein LLP, by Matthew H. Mall, for Guardian ad Litem.

Slip Opinion

McCULLOUGH, Judge.

On 14 July 2004, the Haywood County Department of Social Services ("DSS") filed a petition alleging that A.B.T. was an abused, neglected, and dependent juvenile. DSS alleged that on 8 July 2004, respondent-mother left A.B.T. and her siblings alone from 8:00 a.m. until 4:30 p.m. A.B.T. fed her siblings the one can of soup that could be found in the home. The next day, Child Protective Services went to the home. The social worker observed that there was "one pot of soup that was 3/4s empty." No other food could be found in the home. The stepfather was in the home with

the children and stated that respondent-mother "had taken the child seats and the van and he was unable to transport all the children to get some food for them." When confronted with this information, respondent-mother lied and told the social worker that the children had been left with a friend. However, respondent-mother later admitted that she had left the children alone. Thereafter, on 13 July 2004, respondent-mother told the social worker that the stepfather had "inappropriately touched A.B.T. and the child had a bleeding bottom." DSS alleged that respondent-mother took no action to ensure that the incident was not repeated.

DSS further claimed that respondent-mother suffered from "severe mental health issues" and was not currently under treatment. DSS stated that the Department of Social Services in Arizona had substantiated physical and emotional abuse of the children by respondent-mother and that she had been diagnosed with dysthymic disorder and borderline personality disorder. Accordingly, DSS alleged that respondent-mother was not providing proper care or supervision for A.B.T. DSS assumed custody of A.B.T. by non-secure custody order.

On 10 November 2004, DSS filed an additional petition alleging abuse, neglect, and dependency concerning A.B.T. DSS stated that in July 2004, A.B.T. made disclosures of sexual abuse to the investigating social worker. DSS alleged that:

The disclosures regarded the stepfather . . . touching [A.B.T.'s] private parts and having her touch his and the child reporting this incident to her mother. The [r]espondent mother continued to reside with her children

and [the stepfather] following the child's report of sexual abuse by [the stepfather] and did not take any steps whatsoever to protect A.B.T. and her siblings further.

DSS further alleged that during A.B.T.'s medical examination, A.B.T. disclosed that the stepfather had "taken her hand, put it on his penis." A.B.T. additionally told the medical examiner that the stepfather: (1) watched pornographic movies, (2) rubbed A.B.T.'s stomach and genitals, (3) told her not to tell anyone, and (4) smoked marijuana from a pipe in front of the children. On 24 March 2005, A.B.T. was adjudicated a neglected juvenile.

On 22 February 2006, the trial court held a permanency planning review hearing. The court found that A.B.T. was placed in respondent-mother's home on 30 September 2005 for a trial home visit. A.B.T. was removed from the home on 26 January 2006 following a domestic violence incident between the respondent-mother and her boyfriend which was witnessed by A.B.T.

On 3 August 2006, the trial court held another permanency planning review hearing. The court found that respondent-mother had been addressing her mental health needs and been demonstrating appropriate parenting skills during visitation with A.B.T. The court found that a three-month transition of A.B.T. back into respondent-mother's home was appropriate and concluded that reunification was the appropriate plan for the juvenile.

The trial court held a review hearing on 7 February 2007. The court found that A.B.T. was placed with respondent-mother on 1 November 2006 for a trial home visit. A.B.T. was removed from the

home on 11 January 2007. The court found that respondent-mother failed to demonstrate proper parenting skills, leading to removal of A.B.T. from the home. The court cited "major safety concerns" for A.B.T. including: (1) respondent-mother leaving A.B.T. and her minor sibling with a neighbor who had not been approved for care of the children; (2) respondent-mother having sexual relations with a then sixteen-year-old male while A.B.T. was present in the home and witnessed by A.B.T.; (3) the then sixteen-year-old male fondling A.B.T. and wanting to have sex with her and respondent-mother allowing the male to remain in the home around A.B.T.; (4) respondent-mother wanting to marry the then sixteen-year-old male; and (5) respondent-mother allowing other children in her home who were high or drunk, respondent-mother having provided alcohol to these children and A.B.T.

On 25 April 2007, the trial court held a permanency planning review hearing. The court noted that respondent-mother faced criminal charges for sexual offenses against minors, and that some of the charges involved A.B.T. Respondent-mother was incarcerated and not allowed contact with A.B.T. The court found that respondent-mother had demonstrated inappropriate parenting and had "no comprehension of appropriate boundaries" regarding A.B.T. Furthermore, the court found that respondent-mother had not benefitted from therapy and had "repeatedly placed [A.B.T.'s] mental, emotional and physical wellbeing [sic] health in jeopardy." Accordingly, the permanent plan for A.B.T. was changed to adoption and the court ordered DSS to pursue termination of respondent-

mother's parental rights.

On 9 July 2007, DSS filed a petition to terminate respondent-mother's parental rights. DSS alleged two grounds for termination: (1) that respondent-mother had neglected the juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a) (1); and (2) that respondent-mother had willfully left the juvenile in foster care for more than twelve months without showing that reasonable progress under the circumstances had been made in correcting those conditions that led to the removal of the juvenile, pursuant to N.C. Gen. Stat. § 7B-1111(a) (2) (2007).

The hearing was held on the petition to terminate respondent-mother's parental rights on 6 and 7 February 2008. The trial court concluded that respondent-mother had neglected A.B.T. pursuant to N.C. Gen. Stat. § 7B-1111(a) (1); and had willfully, and not solely due to poverty, left A.B.T. in foster care for more than twelve months without showing reasonable progress under the circumstances to correcting those conditions which led to the removal of A.B.T. from her custody, pursuant to N.C. Gen. Stat. § 7B-1111(a) (2). The trial court further concluded that it was in A.B.T.'s best interest that respondent-mother's parental rights be terminated. Accordingly, the trial court terminated respondent-mother's parental rights. Respondent-mother appeals.

Respondent-mother first argues that the trial court erred by concluding that she had failed to correct the conditions that led to the removal of A.B.T. from her home. Respondent-mother additionally argues that the trial court's findings of fact are not

supported by cogent and convincing evidence in the record.

“On appeal, the standard of review from a trial court's decision in a parental termination case is whether there existed clear, cogent, and convincing evidence of the existence of grounds to terminate respondent's parental rights.” *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) (quoting *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996)), *aff'd*, 360 N.C. 360, 625 S.E.2d 779 (2006). N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support a termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990).

In the instant case, the trial court terminated respondent-mother's parental rights pursuant to both N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and N.C. Gen. Stat. § 7B-1111(a)(2) (willful failure to correct the conditions which led to the removal of the juvenile from the home). In her assignments of error, respondent-mother assigned error to the enumerated conclusions of law that encompassed both of the trial court's conclusions that grounds existed to terminate respondent-mother's parental rights. However, respondent-mother does not affirmatively state in any of her assignments of error that the trial court erred by concluding that she neglected A.B.T. See N.C. R. App. P. 10(c)(1) (“Each assignment of error . . . shall state plainly, concisely and without argumentation the legal basis upon which error is assigned.”) Moreover, in her brief, respondent-mother does not

specifically articulate any argument that the trial court erred by concluding that she neglected A.B.T. Therefore, because respondent-mother advances no argument concerning the conclusion of neglect, we hold that the ground of neglect is conclusively established. "[W]here the trial court finds multiple grounds on which to base a termination of parental rights, and 'an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.'" *P.L.P.*, 173 N.C. App. at 8, 618 S.E.2d at 246 (quoting *In re Clark*, 159 N.C. App. 75, 78 n3, 582 S.E.2d 657, 659 n3 (2003)). Accordingly, we need not address respondent-mother's arguments concerning the remaining ground for termination found by the trial court.

Respondent-mother next challenges findings of fact from the dispositional phase of the termination hearing. Specifically, respondent-mother argues that the trial court erred by finding:

56. Given the history between A.B.T. and [respondent-mother] and A.B.T.['s] behaviors while in the physical possession of [respondent-mother], it is unlikely that any future placement would succeed and it is not safe to return the child to the home of the Respondent Mother.

* * * *

58. The child [A.B.T.] wants the rights of her [respondent-mother] terminated so that she can proceed to an adoption and have a normal childhood.

The dispositional phase is for the trial court and the parties "to design an appropriate plan to meet the needs of the juvenile

and to achieve the objectives of the State in exercising jurisdiction." N.C. Gen. Stat. § 7B-900 (2007). If findings made during the dispositional phase are supported by competent evidence, they are binding on appeal. *In re Eckard*, 144 N.C. App. 187, 197, 547 S.E.2d 835, 841, *reversed on other grounds*, 148 N.C. App. 541, 559 S.E.2d 233 (2001).

First, regarding finding of fact 56, Senia Warden, a licensed clinical social worker who worked with both respondent-mother and A.B.T. prior to the child's removal from the home, testified that it would not be "safe . . . from a mental health standpoint" for A.B.T. to return to the home. Warden's concern was based on the fact that respondent-mother was incarcerated and had received no further treatment. Additionally, a psychological report prepared following A.B.T.'s final home visit concluded that:

Unless A.B.T. is placed in an alternative environment and provided with intensive psychological treatment, she is highly likely to develop personality and behavioral disorders that may become permanently ingrained affecting how she perceives and responds to her environment, keeping her in conflict with society.

Thus, we conclude there was sufficient competent evidence in the record to support the trial court's dispositional finding that a future placement with respondent-mother would be unlikely to succeed and it was not safe to return A.B.T. to respondent-mother's home.

Second, regarding finding of fact 58, Rania Shlien-Dellinger, a clinician and clinical supervisor with the Eliada Home facility

where A.B.T. resided, testified that A.B.T. wanted respondent-mother's parental rights terminated. Respondent-mother asserts that this evidence is insufficient to support the trial court's findings of fact because "it is plain [Ms. Dellinger] was not telling the truth." At the very least, respondent-mother claims that Ms. Dellinger's testimony was "unreliable." We are not persuaded.

This Court has stated:

In a nonjury trial, it is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony. If different inferences may be drawn from the evidence, the trial judge must determine which inferences shall be drawn and which shall be rejected.

In re Gleisner, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365-66 (2000) (citation omitted). Thus, it was for the trial court to determine the credibility of Ms. Dellinger's testimony, and its finding based on Ms. Dellinger's testimony is binding on appeal. See *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (stating that it is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom"). Accordingly, we affirm.

Affirmed.

Judges JACKSON and STEPHENS concur.

Report per Rule 30(e).