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NO. COA11-505  
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

IN THE MATTER OF:

K.R.M.

Haywood County  
No. 09 JT 114

Appeal by respondent-father from orders terminating his parental rights entered 3 March 2011 by Judge Roy T. Wijewickrama in Haywood County District Court. Heard in the Court of Appeals 26 September 2011.

*Rachael J. Hawes, for petitioner-appellee Haywood County Department of Social Services.*

*Robin E. Strickland, for respondent-appellant father.*

*Pamela Newell, for guardian ad litem.*

CALABRIA, Judge.

Respondent-father ("respondent") appeals from the trial court's orders terminating his parental rights. The hearing for termination of the mother's rights was held separately from respondent's hearing. The mother is not a party in the appeal. We affirm.

### I. Background

K.R.M. ("Kate")<sup>1</sup> was born 14 January 2000. At the age of four, a court in Virginia granted custody of Kate to respondent. Since Kate, respondent and his wife ("stepmother") (collectively "the family") moved from Tennessee to North Carolina when Kate was eight years old, the Tennessee Department of Children's Services referred the family to the Haywood County Department of Social Services ("DSS"). The family has a documented history with social services in three states beginning in 2007.

On 29 September 2009, DSS filed a petition alleging that Kate had not been provided adequate medical treatment, was physically abused and not properly fed. On 30 November 2009, Judge Richard K. Walker ("Judge Walker") concluded the juvenile was abused, neglected and dependent and entered an order that adjudicated the juvenile abused, neglected, and dependent. In a separate disposition order, Judge Walker approved a permanent plan of reunification and ordered Kate's placement in DSS custody. Judge Walker also ordered respondent and stepmother to participate in Kate's therapy and follow all recommendations from Kate's therapist.

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<sup>1</sup> We use pseudonyms to protect the identity of the children and for ease of reading.

On 4 October 2010, Judge Danya L. Vanhook's ("Judge Vanhook") order changed the permanent plan to a concurrent plan of legal guardianship or adoption. Judge Vanhook ordered respondent to comply with individual therapy to address his depression and aggressive behavior and to continue with therapy while he had supervised visitation with Kate. In June 2010, DSS arranged a "Capacity to Parent" evaluation, during which respondent blamed his parenting problems on Kate's Mosaic Turner Syndrome. In addition, he was unable to identify any changes he could make to provide more appropriate structure or discipline for Kate.

On 5 November 2010, DSS filed a petition to terminate the biological parents' parental rights. As to respondent, DSS alleged four grounds for termination: (1) abuse and neglect (N.C. Gen. Stat. § 7B-1111(a)(1) (2009)); (2) willful placement outside of the home or in foster care without a showing of reasonable progress (N.C. Gen. Stat. § 7B-1111(a)(2) (2009)); (3) willful failure to pay a reasonable portion of the cost of care (N.C. Gen. Stat. § 7B-1111(a)(3) (2009)); and (4) incapability to provide "for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile" (N.C. Gen. Stat. § 7B-1111(a)(6) (2009)).

On 8 February 2011, foster care worker Kristie Krejci ("Ms. Krejci") was the only witness at the termination hearing. On 3 March 2011, the trial court found that grounds existed for termination and concluded there was sufficient evidence to support all four grounds alleged by DSS as to respondent, and that it was in Kate's best interests to terminate respondent's parental rights. The trial court ordered the termination of respondent's parental rights. Respondent appeals.

## II. Termination of Parental Rights

Respondent's first argument on appeal is that the trial court improperly concluded that grounds existed to terminate his parental rights. We disagree.

At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove that at least one ground for termination exists by "clear, cogent, and convincing evidence." N.C. Gen. Stat. § 7B-1109(f) (2009); See *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). The standard of review 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 Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000) (internal quotations and citation omitted).

We note that although the trial court concluded grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), and (6) to terminate the father's parental rights, we find it dispositive that the evidence supports termination of his parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(6). See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) (a finding of one statutory ground is sufficient to support the termination of parental rights).

The trial court may terminate a respondent's parental rights upon a finding:

That the parent 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 G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6). A "dependent juvenile" is further defined as:

A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or

whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-101(9) (2009). In determining whether a juvenile is dependent, the court must consider both: "(1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangement." *In re P.M.*, 169 N.C. App. 423, 427, 610 S.E.2d 403, 406 (2005).

In the termination order entered in the instant case, the trial court found:

19. The recommendations of the Capacity to Parent Assessment were not favorable. The Respondent Father was unable to apply what was learned in Love and Logic parenting classes to the child. It did not appear likely that that [sic] taking another class was going to remedy this situation. Dr. Cummings did not hear voiced and did not see reflected in demeanor or behavior, a motivation to figure out what to do if Plan A did not work. In the real life observation session, when Plan A did not work, Plan A was implemented repeatedly. This is a set up for disaster should the child return home. [The father's] skills for managing a child known to have serious behavior and learning problems are quite limited and the potential for further abuse and mistreatment is high.

. . . .

24. The Respondent Father has a diagnosis

of Depression. He was hospitalized in the Behavioral Health Unit at least three times during the pendency of this case and hospitalized on one occasion while in the State of Virginia. He is incapable of providing care for [the] child and unable to think of new ways to deal with the juvenile's discipline issues.

25. The minor child is a difficult child to parent and discipline due to Mosaic Turner Syndrome, severe Attention Deficit Hyperactivity Disorder, Post-Traumatic Stress Disorder, Attachment Disorder, and a lot of behavioral issues. Parenting of and discipline for [the juvenile] requires effort and a lot of structure.

26. The Respondent Father named his Brother in the State of Tennessee for the Department to consider for potential placement. His Brother was denied as an alternative childcare arrangement for placement through an ICPC Home Study. The Respondent Father named no one else as a potential placement for the child.

Contrary to the father's argument on appeal, we hold that these findings are supported by competent evidence. Finding of fact 19 is essentially a summary of the Capacity to Parent Evaluation. In the evaluation, Dr. Jeanne Devany Cummings ("Dr. Cummings") noted that the father showed "significant evidence of depression" and a "high score in the area of aggressive behavior." Dr. Cummings also noted that "the match between the child and the parental skills set is poor."

Respondent contends, and we agree, that he did make some progress in the parenting class. Respondent was proud of the skills learned in parenting class, including offering choices to Kate. However, Dr. Cummings also noted that respondent "relied *exclusively* on the ideas of time-out, 'giving choices' and talking to her. He did not discuss the use of privilege restriction, or incentives of any kind, or environmental modification as ways of addressing behavior problems."

Neither respondent nor Kate's stepmother considered that their strategies to discipline Kate might fail and neither of them had an alternative plan. While Dr. Cummings recognized that the family appeared sincere in their desire to have Kate return home, ultimately she concluded that their skills for dealing with a child like Kate were limited "and the potential for further abuse and mistreatment [wa]s high."

In addition, Ms. Krejci testified that respondent's depression makes it difficult for him to find ways to deal with Kate's unique issues and needs. She also stated his diagnosis made her feel respondent was incapable of caring for Kate. The trial court's findings were supported by clear, cogent and convincing evidence.



As to the second consideration, whether the parent had any appropriate alternative child care arrangements, respondent failed to show that there were any appropriate alternatives. Ms. Krejci testified that the father's brother had been rejected as a possible alternative placement for the juvenile, and that the father had not offered any further alternatives. As a result, we find that the trial court's findings of fact are supported by sufficient evidence and, in turn, support the conclusion that the juvenile was dependent.

### III. Best Interests of the Child

Respondent next argues that the trial court improperly concluded that it was in the juvenile's best interests to terminate his parental rights. We disagree.

After the trial court determines that at least one ground for termination exists, it proceeds to the disposition stage to determine whether termination is in the best interests of the juvenile. N.C. Gen. Stat. § 7B-1110(a) (2009). The trial court's decision at this stage is reviewed for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). In determining the best interests of the juvenile, the trial court shall consider the following factors:

- (1) The age of the juvenile.

(2) The likelihood of adoption of the juvenile.

(3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.

(4) The bond between the juvenile and the parent.

(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.

(6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2009). "[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them." *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (internal quotations and citation omitted).

In the instant case, the trial court found:

36. The Court has considered the six factors enumerated in N.C.G.S. 7B-1110(a).

37. The minor child is currently 11 years of age. The likelihood of adoption is good. Although currently placed in a psychiatric residential treatment facility, she continues to make progress. It is hopeful that the minor child can begin bonding with a family for permanency once she is stepped down from the therapeutic setting.

38. Termination of parental rights will aid in the accomplishment of the permanent plan of adoption for the minor child.

39. From September 2010, when he moved to the State of Virginia, until approximately two weeks ago, the Respondent Father had not exercised visitation with the minor child. They have had some telephone conversations on a sporadic basis. The juvenile cares about her Father, but knows she is not safe in his home.

. . . .

41. The conduct of the Respondent Father has been such as to demonstrate that he will not promote the healthy and orderly physical and emotional wellbeing of the juvenile.

42. The juvenile is in need of a Permanent Plan of Care at the earliest age possible that can be obtained only by the severing of the relationship between the juvenile and the Respondent Father by termination of his parental rights.

43. It is in the best interests of [the juvenile] that the Respondent Father's parental rights be terminated.

Respondent primarily contends that it is unlikely that Kate will be adopted, given her special needs. Respondent further argues that the trial court's findings concerning the likelihood of adoption are not supported by the evidence, and that the evidence does not support the conclusion that termination of respondent's parental rights was in Kate's best interests.

We note first that the trial court's findings directly address the factors listed in N.C. Gen. Stat. § 7B-1110(a). As

to the issue of the likelihood of adoption, Ms. Krejci testified that given Kate's age, she was very likely to "find a permanent home." Ms. Krejci further testified that a family would soon begin mentoring Kate and working through her progress at the Psychiatric Residential Treatment Facility which could open avenues for future adoption. Ms. Krejci also prepared DSS's juvenile court summary which similarly characterized Kate's prospects for adoption, and recommended that terminating respondent's parental rights would aid in making progress toward achieving the goal of adoption. DSS's summary also indicated that Kate was making progress in her current placement and the staff was hopeful that she would be ready to bond with a family and succeed in a foster setting.

While respondent correctly contends that at one point, Kate did express that she wanted to live with respondent or her mother, this statement was made almost a year prior to the termination hearing. At the hearing, Ms. Krejci testified about the bond between respondent and Kate. She stated that Kate "cares about her father" but "she knows also that she's not safe at home."

Accordingly, we find that the trial court's findings concerning adoption accurately characterize the evidence

presented and support its conclusion that terminating respondent's parental rights was in Kate's best interests. As a result, we affirm the trial court's order terminating respondent's parental rights.

IV. Conclusion

The trial court did not err in terminating respondent's parental rights or in determining it was in Kate's best interests to terminate his parental rights. The trial court made the required findings of fact in compliance with N.C. Gen. Stat. §§ 7B-1111(a)(6); 7B-1110(a) (2009). We affirm.

Affirmed.

Chief Judge MARTIN and Judge MCGEE concur.

Report per Rule 30(e).