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NO. COA11-704
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

IN THE MATTER OF:

N.E.D., I.D.D.,
E.J.D. and S.L.D.

Gaston County
Nos. 09 JT 226-29

Appeal by respondent-father from orders entered 12 April 2011 by Judge Thomas G. Taylor in Gaston County District Court. Heard in the Court of Appeals 10 October 2011.

Elizabeth Myrick Boone for petitioner-appellee, Gaston County Department of Social Services.

Pamela Newell for respondent, Guardian ad Litem.

Levine & Stewart, by James E. Tanner, III, for respondent-appellant, father.

BRYANT, Judge.

Because the record contains clear, cogent and convincing evidence that respondent continued to engage in substance abuse after his biological children were removed from his residence, we affirm the trial court's conclusion that he "willfully and not due solely to poverty, left the juvenile[s] in foster care

for more than twelve (12) months without showing to the satisfaction of the Court that reasonable progress under the circumstances had been made in correcting those conditions which led to the removal of the juvenile[s]"

K.D. ("respondent") appeals from orders terminating his parental rights to four children, N.E.D. (Neil), I.D.D. (Ian), E.J.D. (Eric), and S.L.D. (Shelly).¹ Respondent contends the trial court erred in determining grounds existed to terminate his parental rights. We affirm the orders.

Respondent and the biological mother are the unmarried parents of Neil, born November 2004; Ian, born June 2006; Eric, born May 2007; and Shelly, born October 2008. After the parents separated in 2008, the children lived with the mother. The Gaston County Department of Social Services (DSS) became involved with the family in April 2009 when it received reports of substance abuse, and improper care and supervision of the children. On 16 July 2009, DSS received a report from police that while in the presence of two of the children, the mother stabbed someone with a knife and the father intervened. DSS filed a petition alleging that the children were neglected juveniles and took nonsecure custody of the children.

¹ Pseudonyms have been used to protect the identities of the juveniles.

DSS filed a second neglect petition on 21 August 2009. DSS alleged that the parents were intoxicated at the time of the July 2009 incident; that the parents engage in acts of domestic violence; that the mother abuses alcohol and controlled substances; and that respondent abuses marijuana. Respondent and the mother entered into a mediated agreement in October 2009. Pursuant to the agreement, the parents admitted the children were neglected based upon the following pertinent facts: respondent abuses marijuana, the mother abuses alcohol and suffers from mental health problems, and the mother assaulted respondent during an argument in 2008. Respondent and the mother entered into separate case plans as part of the mediated agreement.

The trial court held adjudicatory and dispositional hearings on 27 October 2009. By order entered 4 December 2009, the trial court adjudicated the children neglected juveniles based on findings of fact admitted to by both parties in their mediated agreement. The trial court ordered the parents to comply with their respective case plans, which were incorporated into the court's order. Review hearings were conducted in January, March, June, September, and October of 2010.

On 29 November 2010, DSS filed a petition to terminate respondent's parental rights alleging that grounds existed to terminate the parental rights of respondent under N.C. Gen. Stat. § 7B-1111(a)(1)(2009) (neglect); N.C. Gen. Stat. § 7B-1111(a)(2)(2009) (failure to make reasonable progress); N.C. Gen. Stat. § 7B-1111(a)(6)(2009) (incapable of providing care and supervision); and N.C. Gen. Stat. § 7B-1111(a)(7)(2009) (abandonment). The trial court held a hearing on the termination petition on 14 March 2011. In separate orders, the trial court concluded that grounds existed to terminate respondent's parental rights as to each child under N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2). The trial court further concluded that it was in the best interests of the children to terminate respondent's parental rights. Respondent appeals.

On appeal, respondent contends that the trial court erred in terminating his parental rights based upon the conclusion that the juveniles were neglected and that respondent willfully left the juveniles in foster care for more than twelve months without showing reasonable progress in correcting those conditions which led to the removal of the juveniles.

Preliminarily, we note that a finding of one statutory

ground is sufficient to support the termination of parental rights. *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984). And, although the trial court concluded that grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) and (2), we address respondent's arguments only with regard to termination pursuant to section 7B-1111(a)(2).

Standard of Review

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004)
(citation and quotations omitted).

When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate. . . . If there is competent evidence to support the trial court's findings of fact and conclusions of law, the same are binding on appeal even in the presence of evidence to the contrary.

In re Oghenekevebe, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397-98 (1996) (internal citations omitted).

Respondent argues that he "substantially complied with virtually every component of his case plan" and, thus, the trial court erred in concluding that he "willfully" left his children in a placement outside of his home. We disagree.

Under North Carolina General Statutes, section 7B-1111(a)(2), a court may terminate parental rights on the ground "[t]he 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." N.C. Gen. Stat. § 7B-1111(a)(2) (emphasis added). The willful leaving of the child is "something less than willful abandonment" and "does not require a showing of fault by the parent." *In re Oghenekevebe*, 123 N.C. App. at 439, 473 S.E.2d at 398 (citations omitted). A finding of this ground may be made when the parent has made some attempt to regain custody of the child but has failed to show reasonable and positive progress. *In re Nolen*, 117 N.C. App. 693, 699-700, 453 S.E.2d 220, 224-25 (1995).

In support of its conclusion that respondent failed to make reasonable progress toward correcting those conditions which led

to the removal of the juveniles, the trial court made the following findings of fact:

7. That the minor child[ren] [were] taken into custody on July 16, 2009, due to domestic violence involving the parents in the presence of the juvenile; The parents have a history of substance abuse; That the parents could not provide appropriate housing or income to care for the juvenile.

8. That the Respondent/Father entered into a mediated case plan which enumerated and described the steps he was required to take to reunify with his child.

9. Substance abuse treatment was to be first priority, [Respondent/Father] will successfully resolve any substance abuse or alcohol issues and maintain sobriety on an ongoing basis. Respondent substantially completed treatment, however, the Respondent/Father was stopped and arrested for Driving While Impaired on March 11, 2011, just three days prior to this hearing. When asked on the stand about how long since he last drank any alcohol he stated two to three months. When confronted with the DWI charge, he admitted that he had lied to the Court. Respondent/Father was to submit to random drug screens and that failure to test will be considered dirty. Respondent/Father had many clean screens, however, on October 27, 2010, failed to show for a screen; February 7, 2011, failed to show for a screen; on March 2, 2011, claimed he could not submit a sample.

10. That in the area of substance abuse, the Respondent/Father's issues may not rise to the level of addiction, but he has displayed an attitude of complete irresponsibility.

11. Respondent/Father was to complete parenting classes. The Respondent/Father did complete parenting classes, however, he failed to demonstrate appropriate parenting skills during visits. Both respondents were not consistent in their disciplining of the juvenile. No Court [sic] has seen fit to grant the Respondents unsupervised visits at any point during this child's twenty (20) months in the Department's custody.

12. Both parents were able to functionally parent in a sober and supportive environment, that being the highly artificial atmosphere of the visitation room, but have shown no ability to parent on their own.

13. That the Respondent/Father was not to break any laws. The Respondent/Father [K.D.] was stopped and arrested for Driving While Impaired on March 11, 2011, just three days prior to this hearing. That the Respondent/Father admitted he has been driving even though he has no valid driver's license.

. . .

15. The Respondent/Father was to maintain employment or income sufficient to provide for the minor child[ren]. The Respondent/Father has never provided the Department proof of independent housing or income sufficient to provide for the juvenile[s].

Respondent challenges findings of fact 9 and 10. The remaining unchallenged findings of fact are presumed to be correct and conclusive on appeal. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

On 14 March 2011, the trial court held a hearing on DSS's petition to terminate respondent's parental rights to Neil, Ian, Eric, and Shelly. Testimony presented by a social worker described the substance abuse portion of respondent's case plan with DSS. The social worker testified that respondent was recommended for 40 hours of substance abuse treatment, which he completed in July 2010; however, in June 2010, he tested positive for cocaine. In October 2010, he was reassessed and recommended for twenty additional hours of substance abuse treatment. At the time of the hearing, respondent had not completed the additional substance abuse treatment. The social worker also testified that respondent agreed to submit to random drug tests. In addition to testing positive for cocaine, respondent tested positive for marijuana on 23 July 2009, 3 September 2009, and 25 February 2010. On one occasion in 2009 and five occasions between 2010 and 2011, respondent missed the drug screen appointment or could not produce a sample for testing.

Respondent also testified about his substance abuse history. He testified that it had been about a year since he last smoked marijuana and a couple of months since he consumed alcohol. However, when confronted, he acknowledged that three

days prior to the hearing, he had been stopped and arrested for driving while under the influence after having consumed "[a] couple of beers." Respondent further testified that although he does not drink liquor and does not drink alcohol every week, when he does drink, he consumes "like a six-pack [of beer]" over "a few hours." Based upon testimony at the hearing, we conclude findings of fact 9 and 10 are supported by clear, cogent and convincing evidence. See *In re Shepard*, 162 N.C. App. at 221-22, 591 S.E.2d at 6. Further, the aforementioned findings of fact support the trial court's conclusion that respondent "willfully and not due solely to poverty, left the juvenile in foster care for more than twelve (12) months without showing . . . reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile[s], § 7B-1111(a)(2)."

We hold that the trial court's findings of fact support the trial court's conclusion that grounds for termination of respondent's parental rights exist under N.C. Gen. Stat. § 7B-1111(a)(2). Respondent does not challenge the conclusion that the termination of respondent's parental rights is in the best interests of Neil, Ian, Eric, and Shelly.

Accordingly, we affirm the trial court's orders terminating respondent's parental rights to Neil, Ian, Eric, and Shelly.

Affirmed.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).