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NO. COA01-752

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

IN RE: JOSEPH RAY MURRAY

Cabarrus County  
No. 00 J 85

Appeal by respondent from order filed 12 September 2000 by Judge Donna H. Johnson in Cabarrus County District Court. Heard in the Court of Appeals 26 March 2002.

*Kathleen Arundell Widelski, for Cabarrus County Department of Social Services, petitioner-appellee.*

*Sam S. Spagnola, for respondent-appellant.*

GREENE, Judge.

James Demond Murray (Respondent), the putative father of Joseph Ray Murray (Joseph), appeals an order filed 12 September 2000 (the adjudication order) adjudicating Joseph neglected and awarding custody of Joseph to the Cabarrus County Department of Social Services (DSS) and a concurrent order terminating his parental rights as to Joseph (the termination order).<sup>1</sup>

On 2 May 2000, DSS filed a petition alleging Joseph had been neglected by Respondent and a second petition requesting the

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<sup>1</sup>While the record is not clear as to Respondent's notice of appeal, we read it as relating to both the adjudication order and the termination order.

parental rights of Respondent be terminated based on neglect. A hearing was held on 11 May 2000 wherein the trial court ordered custody of Joseph be placed with DSS. On 24 August and 8 September 2000, the petition alleging neglect and the petition for termination of parental rights were heard simultaneously before the trial court. The evidence presented during this proceeding revealed Joseph was born with numerous health problems on 9 December 1999<sup>2</sup> and required continued hospitalization for seven months. DSS began its investigation based on a report dated 17 March 2000 alleging: Joseph's mother (the mother) was homeless; her father refused to allow her to bring Joseph home; the mother did not have a plan for Joseph's care; and the mother and Respondent had broken up. The mother subsequently relinquished her parental rights.

From the time of Joseph's birth through 17 April 2000, Respondent visited Joseph only a few times. The investigating social worker made several attempts to locate Respondent and finally made contact with Respondent on 17 April 2000. Respondent entered into a protection plan with DSS, agreeing to visit Joseph on certain days selected by Respondent. While Respondent's visitation was not restricted, he nevertheless failed to visit as planned.

When Joseph was released from the hospital into foster care on 13 July 2000, DSS again contacted Respondent. Respondent arranged

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<sup>2</sup>These health problems included respiratory distress disease, episodes of apnea and bradycardia, sepsis, jaundice, patent ductus arteriosus, anemia, and early chronic lung disease.

with DSS to visit Joseph on 2 August 2000 but subsequently canceled the visit. Respondent thereafter never requested visitation. In addition, Respondent failed to avail himself of opportunities to learn how to properly care for Joseph's ongoing health needs as suggested to him by DSS.

In the adjudication order filed 12 September 2000, the trial court found in pertinent part that:

6. [Joseph] does not receive the proper care, supervision or discipline from . . . Respondent.

. . . .

i) [O]n April 17, 2000, as a result of [DSS'] efforts, [Respondent] contacted [DSS] for the first time and during that conversation he was told that upon his next visit to Joseph, he needed to identify himself [as] Joseph's father and ask the hospital staff about the training he needed to care for Joseph.

. . . .

o) [Respondent] was made aware of Joseph's medical and other special needs[,] such as the need to bond with the child and the need to learn how to care for him.

. . . .

u) [A]t the time of his discharge on July 13, 2000, Joseph['s] needs included, but w[ere] not limited to, the following:

- 1) A g-tube in his stomach for feedings for his oral aversion,
- 2) An apnea monitor,
- 3) Oxygen,
- 4) Physical therapy,

5) Early intervention services for developmental problems, some of which were due to his lack of bonding with his mother and [Respondent,]

6) Numerous weekly visits with specialists[,]

7) A caretaker with skills in CPR, and training in how to care, feed, hold, comfort and monitor Joseph.

. . . .

z) August 2, 2000, [when Respondent telephoned to cancel a visit with Joseph,] was the last time [Respondent] contacted [DSS] about Joseph.

The trial court concluded Respondent had neglected Joseph in that Joseph "does not receive the proper care, supervision, or discipline."

In the termination order, filed the same day, the trial court found that:

11. [E]ach of the following grounds exist to terminate . . . Respondent's parental rights pursuant to N.C.G.S. § 7B-1111(1) [sic]:

a. [Respondent] has neglected [Joseph] and [Joseph] is neglected within the meaning of N.C.G.S. § 7B-101 in that he does not receive the proper care, supervision or discipline from . . . Respondent as adjudicated in [the adjudication order] dated September 12, 2000 and the [findings of] facts of [the adjudication order] are adopted and incorporated as [the trial court's] findings of fact.

. . . .

12. [P]ursuant to N.C.G.S. § 7B-1110[,], it is in the best interest of [Joseph] that . . . Respondent's parental rights be terminated.

a. [Respondent] visited with Joseph less than eight (8) times since his birth, with the last visit [being] on May 17, 2000, and therefore, Joseph has not bonded with him.

b. Joseph still has extensive medical needs[,] and he is still on oxygen and continues to suffer from oral aversion and requires specialized care during his feedings.

c. [A]lthough [Respondent] has the ability to learn to care for Joseph, he has not taken steps to learn how to administer that care.

d. Joseph is currently in a foster home where he receives the care and nurturing that he needs.

The trial court concluded that statutory grounds existed to terminate Respondent's parental rights, among these Respondent's continued neglect of Joseph.

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The dispositive issue is whether the neglect found by the trial court in the adjudication order and relied upon in the termination order was present at the time of the termination proceeding.

Neglect, within the meaning of N.C. Gen. Stat. § 7B-101(15), constitutes one of the grounds that can support the termination of parental rights. N.C.G.S. § 7B-1111(a)(1) (1999). In order to prove neglect in a termination case:

there must be clear and convincing evidence: (1) the juvenile has not, *at the time of the termination proceeding*, "receive[d] proper care, supervision, or discipline from the juvenile's parent . . ."; and (2) the juvenile has sustained "some physical, mental, or emotional impairment . . . or [there is] a

substantial risk of such impairment as a consequence of [such] failure.”

*In re Pope*, 144 N.C. App. 32, 37, 547 S.E.2d 153, 156 (citations omitted) (emphasis added), *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001).

In this case, Respondent did not assign error to any findings or conclusions of the trial court's order adjudicating Joseph a neglected juvenile. Respondent's assignments of error deal solely with the termination order. Accordingly, the trial court's findings and conclusions in the adjudication order, which were also incorporated into the termination order, are presumed to be correct and supported by the evidence. See *In re 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). Hence, we need not consider whether the trial court's findings were sufficient to support its conclusion that Respondent neglected Joseph.<sup>3</sup>

The only question properly considered by this Court is whether the neglect existed at the time the termination proceeding came before the trial court. See *Pope*, 144 N.C. App. at 37, 547 S.E.2d at 156. The sole evidence of neglect consists of Respondent's failure, beginning in April 2000, to avail himself of the training available through the hospital and necessary for the proper care of Joseph. This failure to avail himself of the necessary training continued up to and including the date of the adjudication

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<sup>3</sup>Specifically, we need not address Respondent's argument made in his brief to this Court that we must reverse the termination order because the trial court failed to find Joseph was impaired as a consequence of Respondent's failure to provide proper care.

termination hearing. Thus, the neglect was ongoing at the time of the termination proceeding and the trial court did not err in terminating Respondent's parental rights on this basis.<sup>4</sup>

Affirmed.

Judges TIMMONS-GOODSON and HUNTER concur.

Report per Rule 30(e).

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<sup>4</sup>Because we have determined that one of the grounds set forth in section 7B-1111(a) supports the trial court's conclusion to terminate Respondent's parental rights, we need not address Respondent's challenge to his termination of parental rights by the trial court based on other grounds. See *In re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 220, 225 (1995).