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NO. COA01-753

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

IN THE MATTER OF:

JKH, DWH, BTRH,
Minor Children

Buncombe County
Nos. 00 J 1, 2, 3

Appeal by respondent-father from judgment entered 8 August 2000 by Judge Rebecca B. Knight in Buncombe County District Court. Heard in the Court of Appeals 9 January 2002.

No brief filed by petitioner-appellee Buncombe County Department of Social Services.

Judy Rudolph, Attorney Advocate, for guardian ad litem-appellee Jack Hoglan.

Michael E. Casterline for respondent-appellant.

WALKER, Judge.

JKH, DWH, and BTRH are the minor children of respondent-father (father) and respondent-mother (mother). On 17 October 1997, the Buncombe County Department of Social Services (DSS) filed a juvenile petition alleging the minor children were neglected. After a hearing on 2 February 1998, the district court adjudicated the children as neglected "in that they did not receive the proper care and supervision from their parents and lived in an environment injurious to their welfare due to the domestic violence in the home and the substance abuse of the father."

The trial court ordered custody to remain with the mother with DSS providing protective supervision and all visits between the children and their father were to be supervised at DSS. It also ordered the father to set up child support payments through the Buncombe County IV-D Agency and to "obtain a psychological evaluation and a substance abuse assessment and [to] follow all recommendations of the evaluation and the assessment." The trial court also ordered the children placed in counseling for as long as the counselor recommended.

At a review hearing on 29 April 1998, the trial court noted that the father had failed to establish child support for the children or to obtain the previously ordered psychological evaluation. The trial court again ordered the father to comply with these requirements. At a review hearing on 18 August 1998, the trial court found "[t]hat [the father] has not had any contact with the minor children nor has he followed through with the previous orders of the Court for child support and a substance abuse evaluation."

On 30 September 1998, DSS filed petitions alleging sexual abuse of the minor children by the father and the children were taken into custody by the DSS where they have remained. After DSS presented evidence at the hearing, the father denied the charges of sexual abuse but indicated to the trial court that he did not contest the matter. The trial court found "that based on the evidence already presented by the Department that the evidence supports, by clear and convincing evidence, that the father has

sexually abused his children." The trial court further adjudicated the children as abused and ordered their custody to remain with DSS. The father was ordered to have a sex offender specific evaluation by a psychologist approved by the social worker, to fully comply with prior orders of the court including obtaining a psychological evaluation and immediately contacting the IV-D Agency for child support payments, and not to visit the children until approved by the children's psychological care providers.

On 7 July 1999, the trial court held a Permanency Planning and Review hearing. On 26 July 1999, the trial court found the following in part:

8. That [the father] has an outstanding Order for Arrest for nonsupport. [The father] informed the court that he has paid \$200.00 in child support.

9. That there has been no significant progress by either parent towards reunification of the minor children in either of their homes; therefore, custody of the minor children needs to remain with the Buncombe County Department of Social Services with placement in the discretion of the Department.

. . .

11. That the Buncombe County Department of Social Services made reasonable efforts to prevent removal of the minor children from the home but removal was necessary to protect the safety and health of the children; and, the Buncombe County Department of Social Services has made reasonable efforts to return the children to the home.

12. That it is in the best interest of the minor children that their custody remains with the Buncombe County Department of Social Services with placement in the discretion of the Department.

13. That it is in the best interest of the minor children that any contact with their father be first approved by the children's therapists on their terms and that the therapists be provided a copy of the Sex Offender Specific Evaluation on [the father].

After another Permanency Planning and Review hearing on 23 November 1999, the trial court concluded in part the following:

3. That it is in the best interest of the minor children that the plan in this case should be change[d] from reunification to termination of parental rights due to the fact that this family has been involved with the Buncombe County Department of Social Services for two years. The Buncombe County Department of Social Services has made every possible effort to reunite this family, but the parents will not comply with Court orders and work towards reunification with the minor children. There are no appropriate relative placements available for the minor children.

On 23 December 1999, DSS filed petitions for termination of parental rights. On 8 August 2000, after having heard evidence over several days of hearings, the trial court concluded the following in part:

4. That grounds exist for termination of parental rights of the Respondent Father, [] as follows:

a. The Respondent Father has neglected each of the minor children and there is a high probability that each minor child would continue to be neglected if returned to the Respondent Father's physical and/or legal custody based upon the evidence of changed and unchanged circumstances since DSS initially obtained legal custody on September 30, 1998.

b. The Respondent Father has willfully left the minor children in foster care for more than twelve months without showing any reasonable progress under the circumstances within the twelve months to correct the

conditions which led to the removal of the children.

c. The Respondent Father has failed, for a continuous period of six months next preceding the filing of the petitions, to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

The trial court then ordered that it was in the best interest of the children for the parental rights of the mother and father to be terminated. Only the father appeals the termination of his parental rights.

N.C. Gen. Stat. § 7B-1111 (1999) states the following in part:

(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 within 12 months 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, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, 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.

Our Courts have held that any one of these findings by the trial court is sufficient to support an order for the termination of parental rights.

On appeal, the standard of review is whether the findings are supported by "clear, cogent and convincing evidence" and whether those findings in turn support the conclusions of law. *In re: Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *disc. rev. denied*, 353 N.C. 374, 547 S.E.2d 9 (2001). Even though there might be evidence to the contrary, if there is competent evidence to support the findings, they are binding on this Court.

The father first contends that the trial court erred in finding that he willfully failed to provide child support. The trial court found that the father was ordered to pay a total of \$530.00 per month, beginning on 1 June 1998, for child support and to pay off previously accumulated arrears. Further, from June through December 1999, the father made one payment on 8 July 1999 in the amount of \$1,590.00, which "was an amount paid by the Respondent Father to purge himself of contempt in the child support case." This was the only payment made from 1 June 1998 through 2 March 2000, when \$122.31 per week was paid pursuant to a wage garnishment. The trial court also found that the father "has been able bodied, employed or capable of employment and he has had the ability to pay his child support obligation."

After a review of the record, we find there is competent evidence to support the findings and conclusion that the father has

failed to provide a reasonable portion of the cost of care for the children in the six months prior to filing the petition. Thus, this assignment of error is overruled.

The father also asserts that the trial court erred in concluding that he had neglected the children and that he would continue to neglect the children if custody were returned to him. Parental rights may be terminated "if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to the parent." *In re Pope*, 144 N.C. App. 32, 37, 547 S.E.2d 153, 156, *aff'd*, 354 N.C. 359, 554 S.E.2d 644 (2001). Here, the children were adjudicated neglected on 7 January 1998 and were adjudicated abused on 26 April 1999. The trial court found that all of the children have "significant special needs." The present social worker for the children has had no contact from the father since his being assigned to the case in November 1999. The trial court found the following in part:

The Court specifically reserved the right of the father to work towards visitation with the children by specifying he could meet with each of the children's therapist[s] to address, in a therapeutic setting his visitation with the children. The purpose of this provision was to protect and promote the welfare and best interests of the children and not to simply deny the Respondent Father the opportunity to work towards reunification.

The Respondent Father made no effort to schedule an appointment or meet with the therapists for the children. As a result he was unable to enter into a therapeutic plan for visitation with his children. The father's failure to meet with the therapists and enter into a plan for therapeutic

visitation was contrary to the best interests of the children.

The trial court also found that "both parents were irresponsible, abusive, manipulative and at times, violent, with each other and that this high level of marital and personal dysfunctional [sic] had a damaging and detrimental effect on each of their minor children." There was extensive evidence of domestic violence committed by both parents in the presence of the children before and after DSS became involved.

After a careful review of the record, we find there was sufficient evidence to support the findings and the conclusion that the father had neglected the children and that he would continue to neglect them.

Finally, the father contends that the trial court erred in concluding that he had not made reasonable progress in correcting the conditions that led to the removal of the children. Under the present statute, N.C. Gen. Stat. § 7B-507, DSS has a responsibility to reasonably promulgate plans which could support reunification efforts. When there is substantial compliance with these plans by the parents, reunification should take place.

However, here, evidence is lacking of compliance by the father of the requirements set forth by the trial court and DSS. The trial court found that "[d]uring a portion of the time the children were in custody of the Department of Social Services, the Respondent Father refused to cooperate with DSS in working towards reunification. The Respondent Father testified he was angry at DSS and that is why he was uncooperative." The father also failed to

take actions required to renew visitation with his children by scheduling appointments with their counselors. He had "sporadic and inconsistent contact with DSS during the entire time the children were in DSS custody."

Although he did submit to Sex Offender Specific Evaluation, he failed to disclose that he was adjudicated by the trial court to be a sexual offender of his children. Furthermore, after he was adjudicated to have sexually abused his children, he refused to participate in therapy or treatment and he continues to deny that any sexual abuse occurred.

After a careful review of the record, we find there was substantial evidence to support the findings and the conclusion of the trial court that the father did not show reasonable progress to correct the conditions which led to the removal of the children from his custody.

In conclusion, we find there was clear and convincing evidence, as found by the trial court, to support its findings and, in turn, its conclusion that the parental rights of the father be terminated. The decision of the trial court is

Affirmed.

Judges McGEE and BIGGS concur.

Report per Rule 30(e).